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ABSTRACT

This study examines various tenets of the general theories of political obligation which constitute a large part of classical and modern political thought. The primary objective is to suggest that obedience to the law is never absolute: the good citizen is not morally bound unequivocally to obey the law for all time.

In the first part of this essay, an attempt is made to come to grips with the range of terms and concepts that are both vague and ambiguously employed to denote various modes of behaviour available to the potential dissenter. A classification is suggested whereby such terms as "civil obedience", "rebellion", and "non-resistance" can be given more precise delineation. This is seen as a necessary step in arguing for a more careful assessment of the relevance of political obligation to the justification of civil resistance.

Various theories purporting to show the sources, purposes, and limits of political obligation are examined in order to discover whether sufficient grounds are provided to justify civil resistance. Theories which emphasize the government, its laws, decrees and policies, the nature of the political system, the type of society, and a conception of humanity are critically examined. In particular, it is argued that the discrete model of perfect obligation (consent theory) and teleological

theories stressing the consequences of civil resistance (stability theories) are inadequate in providing guidelines to regulate the behaviour of those engaging in civil resistance. In short, the view of moral freedom implicit in the discrete model was found to be extremely dangerous, and the emphasis on the consequences of civil resistance to society was seen to be grossly insufficient.

A case is made in the concluding chapter for an alternative approach to the question of political obligation. This is advanced as the contingent model of imperfect obligation. It is argued that moral responsibilities are more inclusive than political obligations and that the citizen is morally responsible for all his acts, those of obedience and disobedience alike. Such obligations are prima facie and not absolute. Various factors such as social-political considerations, activity-types, the stake in the community, and the aspects of particular acts are reviewed, and their bearing on any particular decision to obey or disobey is explicated. All together they constitute the moral justification for any given act of obedience or disobedience and they provide practical recommendations for the kind of justification which should be forthcoming from a person contemplating civil resistance.

CHAPTER ONE

In many societies, the need for social co-operation gives rise to periodic debates between the demands of the state and the interests of the individual. The conflict is not just that private interest must be sacrificed for public (for after all this is what social co-operation means) but that a citizen may be commanded to obey an unjust law and thereby commit an immoral act. Under such circumstances how is the good (i.e., moral) man to be reconciled with the good citizen? Is the choice between betraying the community or abdicating one's moral responsibilities? A significant body of political thought has centered around the problem of how the individual is to maintain both his moral integrity and his political loyalty when the dictates of political authority conflict with the dictates of his personal morality.

There are at least two solutions to this dilemma. The first is the possibility that the moral man need not always challenge an unjust law. The solution, then, is to find a moral justification for the use of authority and coercion to ensure obedience to the law. To resolve the supposed conflict between law and personal morality, a means must be found to ensure that obedience is still the morally right act. This is achieved by establishing that for various reasons the citizen has an obligation to obey the law; and by honoring said obligation, he is fulfilling his responsibilities as a moral agent. In short, whatever has been taken as the basis of this obligation has thought to constitute the necessary and sufficient conditions for obedience.

The other solution to the problem of preserving one's moral integrity is the possibility that the good citizen need not always obey the law. This is to say that there have been challenges to the law and to public authority, and that in some of these cases we would want to claim that such action was morally justified. Thus, there are limits to what the political actor may endure, and there are instances when the good citizen may resist his government without jeopardizing his political loyalty.

Unfortunately, such cases of justified resistance or justified obedience are not often easy to identify. And the good citizen qua moral man may be hard pressed to discover a valid response to his moral dilemma. This may explain why much of the literature on this subject has been written during times of direct challenge to the morality of certain governmental action or inaction. We are now experiencing such a period of dissent. And the morally sensitive individual - and I would suggest that this description fits most people in the sense that they do wish to do the morally right thing however imperfect the basis of their conduct may eventually be - is profoundly confused over how to treat those who defy law and order for social, political and economic equality; for peace both from aggression and from nuclear attack; and for students' rights concerning participation in the control of the educational process. Because the moral issues over which disobedience is advocated are rarely sufficiently clear to determine if and what type of resistance is justified, the debate over the nature and limits of dissent may never be fully resolved. Certainly, that stage of political thought has not yet been attained. This essay, then, is part of that continuing inquiry into the problems of civil resistance.

- Where Civil Resistance is Defined -

The underlying assumption of this essay is that obedience to the law is never absolute: the good citizen is not morally bound unequivocally to obey the law for all time. I only assert this assumption; I make no attempt to defend it largely because I find the alternative vicious and utterly destructive to the integrity of the moral agent. This contention must, however, leave open both the proposition that for the most part legality may be sufficient for obedience and the possibility that as a matter of fact disobedience to the law is very difficult to justify. We shall return to both of these propositions later. For the moment however, I am merely rejecting any such argument suggesting that the legality of a rule logically entails its morality.¹ And this means that both obedience and disobedience may be the subject of a moral debate.

We are going to be looking, then, at the nature and types of moral justifications required in defending the use of illegal dissent in a polity. A more careful outline of the objectives and procedures of the discussion needs to be given. But first we must determine which acts of dissent will be considered as requiring moral justification.

Unfortunately, no one has really come to grips with the range of concepts and terms that abound the literature for describing the various modes of behavior that are available to the potential dissenter. Such terms as civil disobedience, rebellion, and revolution are of course commonplace. But what are their distinguishing features? And how are they related to each other? Further, what is

to be done with the raft of related terms such as non-resistance, passive resistance, direct action, non-violent coercion, pacifism, non-cooperation, "satyagraha", violence without hate, and several others? Too often supposed distinctions among modes of dissent have been assumed and not demonstrated. For example, as though it were quite clear as to what he means, Harry W. Jones declares that civil disobedience is "not just another form of political action".² And if this is obscure, consider Stuart M. Brown's assertion that the alternative to civil disobedience is not just obedience but also "nonparticipation in public protests in the course of which laws are wilfully broken".³ Before the inquiry can properly begin, then, some semblance of order must be brought to the terminology of the literature on dissent. The fact that a controversy still surrounds the nature of civil disobedience despite several careful analyses suggests that perhaps this examination of particular activity-types should not be done in isolation from the whole spectrum of dissent. A start will be made, then, in trying to provide an overall framework for the study of dissent.

We need a concept that will encompass all forms of illegal dissent. The rationale for setting such an immodest task is the hope that such a concept will provide a better perspective and insight into the nature of political obligation and its role in the moral justification of illegal acts. Let us begin with a grossly inadequate definition which hopefully by the conclusion of this brief discussion can be modified in order to avoid the more obvious pitfalls. "Civil resistance", then, shall be defined as any illegal act done in protest against the laws and policies of a

government, though it need not be an attempt to overthrow that government. Obviously, there are several different types of activity that could qualify as civil resistance and these need to be identified.

At least three clusters of activity can be recognized immediately: (1) legal protest⁴ (demonstrations) and illegal protest (public riots);⁵ (2) civil disobedience; and (3) revolution. The inclusion of revolution immediately casts doubts on the adequacy of the above definition, for it seems fair to ask whether or not it is reasonable to construe revolution as "protest". Certainly, it would be strange to place both types of activity on the same continuum. A partial solution to this problem lies in the different objectives or purposes that any given act of resistance may have. They include first education, second obstruction, and finally the protection of one's own moral integrity from being compromised by the evil acts of the government. Since this third objective is more relevant to the justification of various acts than the distinction among these acts, it will not be discussed under this section. Let us see how the other two objectives relate to the three types of activity that have been identified.

Surely, one major difference between protest and revolution is that the purpose of the former is to publicize the existence of a wrong, while the purpose of the latter is to coerce reform of that wrong. Because it can be crucial to the moral justification of a particular act, this distinction needs further explanation.

Clearly, one objective of a political act can be to educate either or both the members of a political community and the leaders of that community as to the existence of

certain social injustices and the urgent need for reform. This surely is what Martin Luther King, Jr. had in mind when he said that the purpose of direct action was a "means of laying our case before the conscience of the local and national community".⁶ And this is probably what Bertrand Russell meant when he said that civil disobedience was a "means of propaganda".⁷ Now the type of action used in a given situation (i.e., how one educates) may depend on whom one wants to educate. If the protester is trying to "instruct" the leaders, then perhaps a show of force is required. But if the protester is trying to recruit support or "touch the conscience of the 'masters'",⁸ then he has to demonstrate the sincerity of his intentions and actions. This may involve suffering at the hands of the law enforcers and accepting the legal consequences of his violation. And violence may have to be avoided so as not to divert attention from the intended message.

I suggested above that public riot might be construed as a form of illegal protest. No doubt, many people would object to this proposition. And the basis of their objection might be that in a riot there is no conscious or premeditated effort to educate or protest social conditions as there clearly is in an organized demonstration. Riot is criminal lawlessness pure and simple. Certainly, there are several conceptual problems in treating public riot as protest. Yet I agree with the editors of the magazine The Minority of One when they say that the "uprisings" in the black ghettos should not be deprived of their political status.⁹ The response of governmental officials must be different if these so-called uprisings are characterized

as political acts rather than as criminal lawlessness. To be sure unlike a riot, most protest is usually directed at a particular law or institution that is considered unjust or discriminatory; nevertheless, a riot can be an expression of frustration and discontent over exclusion from full participation in the social, economic, and political life of the country. And to this extent riot could be called an act of protest.

Some analysts have wanted to go even further: they call these acts not riots but rebellions:

At bottom, the looting and sacking of white businesses in the ghettos is an authentic kind of rebellion. Indeed, it may be the characteristic form of revolt in the most advanced materialistic societies.¹⁰

They see this rebellion as having an ethic or morality of its own. Without that ethic or sense of justice there is only hoodlum activity, and this is riot. In order to forestall the deterioration of revolt into riot, it is important - more to the rebel than even to the political elites - that this ethic be preserved.¹¹ Now to say that a riot can be an act of political protest is not to say that it is also a rebellion or a revolt embodying a particular ethic. But the thesis is suggestive and certainly warrants further exploration. All that will be said here is that the concept of rebellion suggests a dimension not usually associated with protest, namely, a direct attempt at coercing the government. To the extent that a riot does attempt to force reform of and not merely demonstrate social injustices, it may also be a form of rebellion. This, however, leads us to the second major purpose of a political act, that which characterizes revolutions, namely obstruction.

The objective of a political act may be to frustrate the implementation of a law or set of laws or to disrupt the current legal and political structure until certain reforms have been achieved. This may be the significance of Jones' remark that civil disobedience is not just another (conventional?) form of political action. It certainly is not conventional in the sense of its being a direct interference with the governmental process. This also appears to be the implication of Alan Lovell's "General Strike" theory whereby disarmament is achieved by those workers employed in munitions manufacture laying down their tools.¹²

By using the two criteria of education and obstruction, civil resistance can embody both public protest and such surreptitious violations of the law as guerilla warfare, rebellion and transgressions of the Prohibition edict. Thus, to classify revolution as civil resistance need not imply that it is being construed as protest.

According to Christian Bay, civil disobedience is always a form of protest:

...mere non-compliance is not enough; the action or non-action must be openly insisted on if it is to qualify as civil disobedience, as the concept is here interpreted.¹³

Failure to comply with an unjust law is a form of obstruction, but if it is "openly insisted on" it too can be classified as civil disobedience. One reason why discussions on civil disobedience seem to emphasize the educational function may be either because most unjust laws are impossible to "disobey" (for example, foreign policy) or because some

injustices are the result of the absence of a law (for example, the lack of effective legislation barring housing discrimination). Both of these cases may necessitate disobeying just laws (for example, traffic regulations), and this is usually done as protest rather than as effective obstruction. Of course, if a general strike did materialize (as it appeared it might in France recently) mass disobedience of laws could conceivably force reforms. Even then, as Bay suggests, it retains elements of protest. So when civil disobedience is designed as a means of education, it can be compared to other forms of protest (legal and illegal); when it is designed to frustrate the law, it can be compared to other methods of obstruction as for example revolution and rebellion.

There is a further dimension that can be used to differentiate among acts of resistance and that is the ends that the civil dissenter hopes to achieve. Specifically, demands for reform can range from the repeal of a law, to a change in the government of the day, to a reformation of the political system, to the transformation of society. This dimension has several implications to the nature of revolution. First, by the differentiation between the objectives of revolution as an activity and the objectives as a program of reform, it would not be contradictory to speak of a "legal" revolution.¹⁴ Further, the relationship between coercive acts and political ends may necessitate the differentiation among civil disobedience, rebellion and/or revolt, and revolution, the extent of change introduced by the act becoming progressively bigger.

This second dimension is most relevant to acts of civil disobedience. It is generally agreed that one defining characteristic of civil disobedience is that it is undertaken "for limited public ends, and by way of carefully chosen and limited means."¹⁵ In particular, the ends of civil disobedience must be compatible with the roles of the adversaries and must be formulated with the view of gaining public acceptance; and the means of civil disobedience must be calculated to maximize efficiency in promoting those ends and to maximize economy of the adverse effects of the protest.¹⁶ In other words, civil disobedience must be designed in order to incur a relatively small risk to the existing system.

This emphasis on limited means and ends probably has led some theorists to suggest that those engaging in civil disobedience must accept as legitimate the existing government. But I see no reason why a revolutionary could not engage in civil disobedience as a tactical measure as long as the act itself did not pose any immediate threat to the existing structure. Surely, if the civilly disobedient had to be loyal to the current social and political order, then one of the most famous campaigns of passive resistance --Gandhi's drive for Indian independence from the British-- could not be classified as civil disobedience. Only if an act constitutes a threat to the on-going system, then it is not civil disobedience. But the question concerning the nature of the ends of civil disobedience raises even more interesting problems, and we shall return to some of these considerations later.

So far I have said very little about all the other terms

that were listed at the opening of this discussion. The only modifications that the above two criteria (i.e., differences in how reform is achieved and the nature of the ends and means) might introduce to the three original modes of dissent would be rebellion and/or revolt to identify those coercive acts of limited ends but of less restricted means. However, this does not mean that these other terms should be dismissed as having nothing to offer in the way of characterizing acts of resistance. Nor does it necessarily mean that the typology that I have presented is grossly inadequate. The way out of this supposed paradox is the consideration that how theorists have gone about justifying particular activity-types has sometimes affected how they have defined those activity-types. That is, they often fail to distinguish those characteristics that are essential for defining a particular action (i.e., the core modes of dissenting behavior) from those characteristics that may be involved in justifying said action (i.e., those characteristics, over and above the core, that may or may not be associated with that core). Thus, for example, an illegal act for limited ends and by limited means may define that form of dissent known as civil disobedience; but the absence or presence of violence would only be a consideration in its moral justification. Now I suggest that many of the above terms denote characteristics that are more important in justifying an action than in defining it. For example, a campaign of satyagraha may require individuals of heightened moral sensitivity to achieve its special set of objectives (i.e., to gain reform non-violently by appealing to the opponent's sense of justice and thereby converting him to the protesters' side through suffering and

deprivation):

Civil disobedience...can only be practised as a last resort and by a select few, who have the moral stature to challenge the law and to accept the consequences.¹⁷

And without those "select few" the campaign is merely non-cooperation or passive resistance. Here supposedly is a legitimate distinction.

However, surely in some sense the two acts are the same because they do involve the same type of behavior at least until the individuals of the latter group can no longer withstand the abuse of their opponents and subsequently resort to violence. The essential difference between the two groups is that the one lacks the conviction and moral fortitude and patience to suffer long enough in order to win concessions without violence. No doubt the effects of the two campaigns are likely to be different. Yet even this need not always be the case. The fact that one campaign suffers a breakdown because of personnel does not necessitate distinguishing two modes of dissent. Where the possibility of a breakdown leading to violence is crucial is in the justification of a given campaign of civil disobedience. Of course, if in the course of the discussion it becomes obvious that a new mode of resistance has been introduced, then the present typology will have to be modified accordingly.

Let me summarize the discussion so far. First of all, civil resistance was chosen as a concept designed to encompass all aspects of illegal dissent. In order that this concept could perform such an immodest task, two dimensions

had to be introduced: (1) a difference in means in achieving reform, namely, education or obstruction; and (2) a difference in the extent of reform implied in a given mode of dissent. Three activity-types were subsequently introduced: 1) protest (legal and illegal); 2) civil disobedience, and 3) revolution (legal and illegal). Rebellion and/or revolt were later added to cover those coercive acts having limited ends. Finally, it was suggested that many of the characteristics so often associated with these core modes of dissent - non-violence, acceptance of the legal penalty for the offence, the type of personnel engaging in the resistance, etc. - were really more important to the justification rather than the definition of these modes. I shall now end this part of the discussion with a modified definition of civil resistance.

Civil resistance is any illegal act designed either as protest to the existence of a social wrong or as obstruction to the operation of the political process in order to force reform of a law, change in a government, or introduction of a new political and/or social order.

- Metaethical Considerations -

Having discussed the scope and nature of the political acts that form the topic of this essay, I now wish to turn to the considerations that are relevant to the moral justification of those acts. These considerations can be divided into two broad categories, procedural and substantive. That is, debate can center around the kinds of arguments that are acceptable (metaethics) and the actual arguments that are found to be compelling (ethics)). The major concern of this

essay is, of course, with substantive arguments, and hence a full debate on the nature of moral theory is just beyond the scope of the paper. Nevertheless, two aspects concerning the nature of moral justification require at least brief attention. They are first the nature of a moral act and second the nature of a rational justification. They require attention because how theorists have interpreted what constitutes a moral act and what makes up a rational justification has affected their standards of adequacy for assessing a moral argument.

What special features characterize a moral act? P. H. Nowell-Smith described the act of fulfilling a moral obligation as follows:

In fulfilling a moral obligation a man chooses to do what he does, but does not choose freely. The feature which distinguishes moral obligations from all others is that they are self-imposed.....¹⁸

Two features are involved here: The first is choice. A moral act must be voluntarily done but it is not necessarily freely done. Nowell-Smith succinctly explains the difference:

There is a sense of 'voluntarily' in which a man chooses to do something acts voluntarily, even though he is 'obliged' to choose as he did...the sailor who is obliged by a storm to make for the nearest port, nevertheless decides to make for the nearest port; his situation is unlike that of the sailor who is simply driven before the wind.¹⁹

The moral agent is "obliged" by duties, obligations, and rules of conduct.

The second feature of a moral act is that it is "self-imposed." That is, the decision to accept a moral limitation to one's choice of action is not "natural" in the sense that man himself and not the elements or physical circumstances (as for example, a storm) impose such limitations. Now theorists have interpreted this feature in both a strong and a weak sense. Some have felt that for a moral limitation to be "self-imposed" the agent must first have consented to that limitation. If he did not consent, he was under no obligation to act in particular ways. This is the strong sense. Other philosophers have maintained that a moral agent must recognize the nature of the limitation and to act because of it. Or as Hanna Pitkin says, "awareness and intention is a precondition for being obligated."²⁰ This is the weak sense. One objective of this essay will be to determine which of the above two senses best characterizes the nature of obedience to political authority, i.e., how acts of obedience can be characterized as "self-imposed". This is vital to any theory of political obligation because it must be demonstrated that the political actor is neither abdicating his responsibility to make his own moral decisions nor rejecting all demands by the state for his obedience. It will be the contention of this essay first that much of the discussion on political obligation has employed the strong sense of self-imposition and second that not until the weak sense is adopted in order to describe acts of obedience can an adequate theory of political obligation be developed.

What special features characterize a rational justifi-

cation? One theorist has described the process of justifying a political act as follows:

I submit that a justifier who can show that an author's act or decision occurred under specified conditions; that that act or decision was an instance of, or at least consistent with, a principle of behavior; that that principle was such that tribunal can allow that author's act or decision was what could normally or reasonably or fittingly be expected under the circumstances, and that similar acts should similarly be approved; such a justifier may claim to have done as much as can humanly be done in reply to the challenger.²¹

Thus, a rational justification consists of three parts: a description of the circumstances, a rule of conduct, and a statement as to the appropriateness of that rule for those circumstances. Debate can occur over the definition of the situation (i.e., the significant features of the circumstances); it was not a riot but a rebellion and hence steps should be taken to alleviate its underlying social causes. Or debate can occur over the appropriateness of the moral rule to an agreed set of circumstances: even if it was a rebellion, restoration of law and order must be the first response of the authorities. An individual who has taken full account of all relevant moral considerations within the available time cannot be blamed if his act subsequently has unfortunate consequences. He need not be omniscient, only sufficiently careful to avoid all unreasonable possibilities of error.

Two points need to be made about this account of a moral justification. The first is the need to stipulate when it is appropriate and when it is not appropriate to ask for a justification. That is, since a justification is

a challenge to the practicability or morality of a given decision, standards must be set as to when that challenge has been answered satisfactorily. Some theorists - those that argue that the legality of a rule entails its morality - reject the need for any justification of obedience and hence any challenge can pre-emptorily be ruled out of order. I have rejected this view as extreme legalism, but these theorists are right in insisting that at some point a call for justification of obedience becomes for all intents and purposes meaningless. Some indication then as to when demands for the ultimate basis of political obligation can be ruled out of order will have to be given.

The second point concerns the question of whether or not the conscientiousness of an act is sufficient to ensure its justifiability. I indicated above that a person may be justified in his decision and therefore exempt from blame but that his subsequent act may turn out badly. In order to take account of this situation some theorists have suggested that as long as the decision is conscientious, then it is also justified:

A "conscientious" act--that is, one based on the fullest possible consideration of all the relevant moral factors--is justified in the sense that he who performs it cannot be blamed for doing so, since he has taken all possible precautions to avoid error.²²

This formulation has a tendency to ignore the distinction between the way a decision is reached - the kinds of arguments that are acceptable - and what the eventual decision is - the actual argument employed. I maintain first that two actors can be conscientious even in the

sense that they take all factors into consideration; second that they still may differ; and third that one may be right and the other morally blameworthy. Consider, for example, the Pacifist's absolute dictum that one should never kill. I believe that situations could arise in which man was morally justified in killing, that he had to do evil to forestall an even more horrendous evil. Now I want to describe the Pacifist's decision not to kill as being conscientious. But if he balked at committing the necessary evil, I would also want to say that he is morally blameworthy. In short, conscientiousness refers to the process of giving moral and non-moral reasons as a justification for one's acts; justifiability refers to giving reasons that a rational man would find compelling.

- A Statement of the Problem -

The task of specifying more carefully the objectives of the essay cannot be postponed any longer. This task shall be divided into two parts: first a statement of the central problem of the paper and second an outline of the procedures for the discussion of that problem. The first part shall be considered here; the second will form the introduction of the next chapter.

The major concern of the paper is with the moral justification of acts of resistance to the government. The traditional approach to this problem has been to start with the logically prior question of justifying obedience. Thus, from determining the legitimate source and purposes of political power, theorists have derived the basis for the citizen's political obligation(s). They then infer from that basis the limits to governmental authority. And

it is these limits that presumably guide anyone contemplating civil resistance. This brings us to the central problem of the essay: Is the assessment of a citizen's political obligation(s) sufficient to guide his actions during civil dissent? Most political philosophers have assumed that it is. But given the failure of any theory to date to provide such a guide, the matter needs to be re-considered.

A more careful assessment, then, of the relevance of political obligation to civil resistance will be made. The proposition to be argued in this essay is that theories that rely solely on obligation as the basis of obedience and hence disobedience either use the term "obligation" so broadly that it becomes meaningless, or if a strict usage is maintained leave out some very relevant considerations relating to the justification of civil resistance. In order that the adequacy of various theories of political obligation may be evaluated, a criterion for comparison must be provided. The test to be employed here will be to examine what the theory says concerning the situation when the specified limits to political obligation have been violated by the government. This involves determining not only when some form of resistance is justified but also which form or forms can morally be employed. That is, a wide variety of options, both legal and illegal, are available to the potential civil dissenter; and an adequate theory of political obligation must provide moral criteria for choosing among them. Practical factors as effectiveness of the action, available resources, and personnel are important only as they touch on the morality of the

response. Only if morality is not involved in the choice among several options may a theory of political obligation remain silent. In short, the test of adequacy is the type of moral guide that a theory provides for the potential civil dissenter. And I shall argue that in most cases of governmental abuse the main question that such a guide must answer is "Which response?" rather than "Should there be a response?" This means not only does one have to look for the basis of a citizen's political obligation(s) and infer from that its limits, but one must also explore further the nature of the moral restrictions around acts of resistance. Only with both of these can one hope to develop an adequate theory of political obligation and civil resistance.

Briefly, let me summarize the objectives. The first is to make a more careful assessment of the relevance of political obligation to the justification of civil resistance. The test for the adequacy of any theory will be the type of moral guide that it provides for anyone contemplating dissent. The second objective is to investigate some of the other considerations that may be relevant to the moral justification of civil resistance. The final objective is to construct an adequate theory of political obligation and civil resistance. As we shall see, this must necessarily fail because many of the normative and the empirical questions cannot be answered satisfactorily at this time.

CHAPTER TWO

The origins of political obligations are derived from the sources and purposes of political power which in turn are formulated in terms of any one or any combination of the following four areas: the government of the day, its laws, decrees, and policies; the nature of the political system; the type of society; and a conception of humanity. Most political theorists have considered one or the other of these areas as sufficient for determining the limits of the citizen's obligations and hence for guiding the civil dissenter. For this study, theories employing the first three of these areas will be tested with the criterion of adequacy outlined in the last chapter in order to see if in fact any one area is sufficient to justify civil resistance. However, since each area can involve a number of different factors, some limitations upon the discussion must be imposed. Under the performance of the government, discussion will be confined to the question, "How well does a particular government respect, protect, and promote certain natural and/or human rights?" Discussion under the nature of the political system will be limited to problems of obligation arising from the question, "To what form of government has an individual pledged his loyalty?" Finally, under the interests of society, discussion will only include the question, "What moral limitations does social stability place upon the actions of a civil dissenter?"

Before performance is discussed, some justification

should be given for the substitution of the above classification of the origins of political obligation for the more traditional classification of natural law, social contract, and utilitarianism. A new classification was prompted because of the ambiguities of the classical theories to state just exactly what the basis of man's political obligations was. Consider, for example, Hanna Pitkin's discussion of the doctrine of consent in John Locke and Joseph Tussman.¹ Depending on what is taken as the authoritative statement for the doctrine, the basis of man's political obligations can be traced from explicit consent to tacit consent then to "hypothetical" consent and finally to governmental performance (where consent becomes irrelevant). This present classification is an attempt to avoid such complications.

Because I shall not deal with the classical theories per sé, I shall also omit the traditional criticisms of these doctrines. I feel further justified in doing this because even if those criticisms did not obtain, I would assert that the following remarks would be sufficient to cast serious doubt on their adequacy as theories of political obligation.

Finally, it may be helpful to compare this new classification with another type of distinction prevalent in moral debate. Alan Gewirth lists two general kinds of moral criteria. The first is deontological:

On this criterion, one ought to do that which is inherently fair or just or right, as determined either by direct consideration of the act and its situation of itself, or by reference to some general formal principle....²

These are the considerations of justice and involve the intentions of an actor. The second kind of criterion is teleological:

On this criterion, one ought to do that which will have the best consequences, do the most good, maximize utility (these three latter expressions being regarded as synonymous).³

These are utilitarian considerations and involve the consequences of an act. Insofar as it may be differentiated from intention, Harald Ofstad has introduced a third criterion, namely motive.⁴ He dismisses it as a basis for decision-making; but although it need not concern us at this stage, some theorists concerned with the doctrine of love have stressed its centrality; and we shall therefore have to return to it in a subsequent chapter. For the time being, let us compare the other two moral criteria with the three areas taken as the basis of man's political obligations. As I have defined the subject matter within each area, both performance and the nature of the political system are deontological; but the former is concerned with substantive considerations of justice, while the latter with procedural ones. The interests of society may be interpreted as a utilitarian or teleological argument. Let us now proceed to the first basis of man's political obligations.

- Performance of the Government -

Before assessing the adequacy of governmental performance as a basis of political obligation, one must first determine how performance can be measured. According to what criteria can it be said that a government is or is

not performing adequately? I stated above that discussion will be confined to one criterion, namely how well a particular government respects, protects, and promotes certain natural and/or human rights. Now, in order to assess how effective a guide each kind of right provides for the civil dissenter, one must first determine to what extent each measures every citizen's political obligations. That is, is each kind the sole basis, a necessary basis, or a sufficient basis for obedience to the law?

Each of the two kinds of rights has been associated with a different conception of human freedom and of the nature of man and the necessary pre-requisites for his growth and development. Justice is the measure to which a government provides those pre-requisites. In order to gain insight into the nature of the political obligations to which a set of rights gives rise, it will be necessary to examine a few aspects of the underlying conception of human freedom.

Natural rights draw from two major traditions of political philosophy, natural law and the social contract. They are derived from an arbitrary, hypothetical, individualistic conception of man considered independently of his social setting. These rights accrue to man as man, not as a social or political animal. Consequently, they define for all time man's essential freedom and equality. Over the years, theorists have emphasized various qualities of man upon which his rights have been based: They include his basic desire for (and hence his right to) self-preservation; his moral nature and need for moral growth; his rationality (his reasonable as opposed to selfish private interests); and other psychological, sociological, and

biological accounts (as for example, man's need for "mental health").⁵ For the purposes of this essay, however, it matters not the exact nature, extent, and source of these rights; for their adequacy as a judge of the performance of any given government will depend on their centrality to the functions of government. Social contract and natural law have differed slightly in the extent of their centrality.

For social contract theorists, the rights of man define the functions of government. They are those rights that would exist in a state of nature and therefore are prior to government and may even be prior to society (if such a distinction can be made). Thus, the explicit purpose of government is to protect the inherent rights of the individual and thereby to maximize his freedom consistent with the minimum standards for the protection of his rights:

Men need an impartial authority to lay down and enforce minimum standards, and to give the rights of nature institutional guarantees. This is the principal purpose of political organization.⁶

Social arrangements are just or unjust according to whether they accord with the principles for assigning and securing fundamental rights and liberties....⁷

Government, then, was "created" specifically for the protection of these rights; and therefore, except to ensure their overall protection they cannot be abridged, not even for considerations of social utility. Thus, natural rights provide the necessary and sufficient conditions for judging the performance of any government and hence for assessing every man's political obligations to that

government. The limits of the citizen's obligation to obey the law are theoretically specified: as long as the government respects and protects these rights he is unequivocally obligated and may not disobey; but should the government violate these fundamental rights his obligations are ended and he may engage in civil resistance.

The relationship between natural law, natural rights, and the performance of government can be more intricate. I say "can be" and not "is" because according to at least one theorist rights derived from the natural law are also "prior" to government in the sense that government was explicitly created for their protection.⁸ But a state of nature is not mandatory for the derivation of a set of natural rights. As long as they remain universal, hold for all time, and define man's essential freedom and equality, they can still be said to "co-exist" with government--i.e., man has never lived, even hypothetically, in a state without government. This distinction between rights being held prior to government and rights being held in conjunction with government is important because in the latter situation while these rights may form a sufficient basis for judging governmental performance (and perhaps even the most significant basis), they need not form the only basis.⁹ Consider, for example, Franz L. Newmann's distinction between resisting as a matter of right (when natural rights have been violated) and resisting as a matter of conscience (when other standards of justice not covered by natural rights have been outraged).¹⁰ (I am assuming here for the moment only that matters of conscience do provide some sort of objective standards for

assessing the performance of government.¹¹) Unlike the social contract doctrine with this formulation other considerations may also be relevant to the judgment of performance. Even so, the conception of obligation employed by this formulation shares certain characteristics with the conception employed by the social contract: Performance is still the sole basis of political obligation; an obligation is something one either has or does not have; and while one has it, he is unequivocally obligated to obey. This conception of obligation will be examined after the discussion on human rights.

The doctrine of natural rights is a theory of individual freedom from unjustifiable coercion. The individual is taken as an autonomous unit entitled to a certain set of civil liberties. Another tradition has developed stressing the potential of man's moral growth. The individual is now dependent upon his social and political environment in order to realize that potential. An earlier form of this latter theory was the organicist conception of the state. Included here would be Rousseau's thesis of forcing men to be free. Because of limitations of space, I shall confine myself to a more recent version of this theory, and that is human rights. Gewirth describes these rights and also contrasts them with the older conception of natural rights:

Government must act not merely to preserve an impartial legal order which "interferes" with individual action as little as possible; it must also bring positive action to bear both to protect each person in an important degree from evils like physical disease and economic privation and to promote the conditions which foster equality of opportunity for each individual.¹²

In order for every man to develop and to attain freedom, the psychological, sociological, and economic handicaps of his environment must be removed; and it is incumbent upon government to ensure that within the available resources minimum conditions for growth do obtain:

...economic and social rights...correspond, not to the duties of individuals but to the duties of governments.¹³

The presumption...is that if the [human] right is not otherwise implemented, the duty rests on the government by default.¹⁴

These rights also define the citizen's obligation to obey the law.

In summary, whereas natural rights provide limits to governmental action, human rights define the limits of governmental inaction. Either or both form the basis of political obligation. As long as the government respects and protects natural rights and/or human rights, every man is morally bound to obey the law. If the government should misuse its power in either direction, then the citizen may morally resist.¹⁵

This concludes the argument that political obligations must be based upon the performance of the government. We must now see if it provides an adequate moral guide for the civil dissenter.

- Moral Freedom and the Discrete Model of Perfect Obligations -

For the most part, theorists using natural and/or human rights as the basis of political obligation have employed a particular conception of moral obligation. For convenience, I shall call this conception the "discrete model

of perfect obligations"; discrete because the citizen is bound to obey and to act only by his political obligations (in this case, obligations arise only from governmental respect of certain rights); perfect first because obligations are considered as something that one either has or does not have and second because while in effect, said obligations bind absolutely (in this case, while said rights are respected, obedience is morally mandatory). Two criticisms which conclusively undermine its usefulness can be made of this model: First, it is totally inadequate in determining which forms of civil resistance are morally justified. Second, it unnecessarily complicates the process of determining if there should be any resistance in the first place. These criticisms require further discussion.

There is something odd about the conception of a moral obligation as something that one either has or has not. Let me explain by examining the relationship of the individual to other members of the polity once the limits to his political obligations have been violated. The assumption seems to be that once the government goes beyond these specified limits each citizen becomes a "morally free" agent; and he no longer has to justify any of his subsequent acts. The concept of "moral freedom" shall be used to describe the status of the citizen when he has been released from his political obligations.

Moral freedom means that in a given area of human behavior an individual in the pursuit of his interests may treat any choice among the possible alternative actions as merely tactical. That is, moral rules do not govern this particular area. An example would be the in-

dividual's choice of a life style, a Volkswagen as opposed to a sports car. With regard to obedience to the law, moral freedom is the alternative to having an obligation to obey; in particular it characterizes all political acts once the limits to every man's political obligations have been abridged. How effective a guide is this concept to the civil dissenter?

For anyone contemplating civil resistance, the concept of moral freedom does provide some sort of a guide: Once he can demonstrate that his obligations to obey are no longer binding, the dissenter is free to judge all his subsequent acts in terms of technical efficiency. According to Nathan Glazer, once sufficient cause for resorting to civil disobedience and rebellion has been shown, "the only question is whether it will work, whether it is effective, whether the time is ripe."¹⁶ John Rawls makes explicit the distinction between questions establishing the right of resistance and tactical questions concerning the exercise of that right:

These conditions [which justify disobedience] are not, I think, exhaustive but they seem to cover the more obvious points; yet even when they are satisfied and one has the right to engage in civil disobedience, there is still the different question of whether one should exercise this right, that is, whether by doing so one is likely to further one's ends. Having established one's right to protest one is then free to consider these so to say tactical questions.¹⁷

What is the force of the "should" in this quotation? At best, its meaning is ambiguous, and that is probably what makes this model of obligation seem plausible. Sometimes, in addition to establishing the basis of political obli-

gation, a theorist may also specify a set of conditions for the conduct of an actor engaging in resistance. He may, for example, admonish the resister not to use violence or to accept the legal penalties of the violation. Thus, there appear to be two sets of moral criteria: one set to decide when the right of resistance should obtain and another set to determine which response should be chosen. But on closer examination, the force of the latter "should" is not moral at all. It cannot be because the discrete model stipulates that the citizen is bound to act only on the basis of his political obligations. If he can morally resist, then his political obligations can no longer be in force. That is, the only source of moral restrictions on his acts has been removed. Thus, any conditions that may accompany a theory of political obligation using the discrete model do not carry any moral weight. Criteria for assessing various responses are only tactical; and this is why they include such questions as "whether it will work," "whether it will be effective," "whether the time is ripe," or whether it "furthers one's ends." Rawls admits the failure of his theory to judge adequately among the various options available for dissent:

From the standpoint of the theory of political obedience we can only say that the exercise of the right should be rational and reasonably designed to advance the protestor's aims, and that weighing tactical questions presupposes that one has already established one's right, since tactical advantages in themselves do not support it.¹⁸

These restrictions to pursue one's aims "rational[ly] and reasonably" cannot, of course, be moral. But if a theory of political obedience cannot provide such restrictions,

then surely some other considerations must be introduced. Past theories of obedience which have relied solely on political obligations to define the moral behavior of the citizen have been inadequate, then, because they say nothing about his moral conduct during dissent. And this is precisely the failure of those theories relying solely on a system of rights.

Let us now turn to the second criticism of the discrete model of obligations, namely the fact that it unnecessarily complicates the answering of the question, "Should there be any resistance at this time?" In a way this would be an even more damaging criticism than the first because theories using this model at least purport to be able to answer this type of question.

Civil resistance has usually been confined to major governmental abuses or at the very least non-trivial ones. If the alternative to obligation is moral freedom, then the abuse of authority must be fairly substantial before the citizen is released from his obligation to obey. Minor infractions must leave the citizen's obligations intact. This raises the practical difficulty of trying to differentiate between major and minor infractions. The problem of distinguishing between a significant and a trivial abuse is, of course, going to be a major difficulty of any theory of political obligation, whatever model it uses. Further, it is very unlikely that an empirical test will be devised such that this problem can be taken completely out of the realm of personal judgment. Nevertheless, the very possibility that a citizen can be re-

leased from all of his moral obligations compounds the difficulty of distinguishing between major and minor abuses. Rawls, for example, wants to confine acts of civil disobedience to violations of natural rights because in abuses of human rights "the appeal to justice is not sufficiently clear,"¹⁹ and such ambiguity cannot justify releasing a citizen from all of his obligations. "Minor" may become so distorted so as to include the Viet Nam War, Negro ghettos, and the threat of nuclear war. But surely we would want to say that resistance can be justified in some cases in which the injustice is neither so severe nor so widespread as these examples would suggest. The possibility arises, then, that a citizen need not be released from all of his political obligations before he can engage in civil resistance; and such a possibility would necessitate a new model of moral obligation.

- Moral Freedom and the Moral Man

A number of theorists could not accept the possibility that despite the performance of a particular government, obligations to obey the law still may be in effect. Supposedly, such a possibility would deny the moral autonomy of the individual. To avoid the commission of an immoral act, these theorists assert that there cannot be any moral obligation to obey an unjust law:

The only obligation which I have a right to assume is to do at any time what I think is right.²⁰

...one has a moral responsibility to disobey unjust laws.²¹

Moral freedom, then, is thought to be a necessary pre-requisite for preserving the integrity of the moral agent. Presumably, the moral man would be required to challenge all unjust laws.

I indicated in the previous section why I felt that the use of the concept of moral freedom was an unacceptable alternative to a condition of obligation. For similar reasons I feel that it is also a grossly inadequate answer to the problem of preserving the individual's moral integrity. In effect, this formulation does not place any political obligations upon the citizen: he will decide for himself whether to obey any given law. Only his conscientiousness will be the judge of the justifiability of his acts. As a consequence, this formulation does not provide any sort of guide to the civil dissenter, neither in the form of resistance nor in the appropriateness of resistance itself.

The problem still remains, however, as to how it can be said that an individual is acting morally when he accepts an external authority (in this case the government) as binding. The issue is to determine what it means for a moral obligation to be self-imposed. Moral freedom presupposes the strong sense of self-imposition, namely the assumption that obligations are derived solely from an individual's consent. Because he never consented to injustice, the moral man is said to be free to challenge all laws that he considers to be unjust. We need to examine more carefully whether or not moral freedom is a necessary pre-requisite for the self-imposition of moral obligations.

If it is not, then the moral man may be under further restraints than the dictates of his own conscience and this may mean that he ought not to challenge all laws that he considers unjust. In the next chapter we shall consider this problem in the light of the second area upon which man's political obligations have been based, specifically the nature of the political system.

CHAPTER THREE

If one conclusion can be drawn from the last chapter, it would be that substantive considerations of justice are always relevant to questions of political obligation, but not always sufficient either to bind the citizen in obedience nor to guide him in disobedience. For if the content of the law were both necessary and sufficient, then civil resistance could never be justified in a benevolent but nevertheless autocratic system of government. This possibility has led some theorists to argue that while the content of the law can never be discounted, the most important factor is the source of the law; the means, origins and distribution of power as outlined by a constitution. They assume that if the principles for law-making in a given system of government are adhered to, then the justice of the laws is assured. This, supposedly, is the reason why constitutions have been so important: they define how laws are made and therefore profoundly affect which laws are made. Hence, procedural, not substantive, considerations of justice form the basis of every man's political obligation(s). This--the nature of the political system or the procedural arrangements for law-making--has been the second major source of the obligation to obey the law.

The most widely employed procedural device upon which political obligations have been based is, of course, the "consent of the governed." Consent as a device for creating obligations has been interpreted in two quite distinct

ways: (1) as procedures by which laws are made, i.e., certain features of a democracy increase the citizen's obligation to obey; and (2) as procedures by which moral obligations are assumed, i.e., an individual cannot acquire an obligation without his consent (this is the strong sense in which moral obligations are said to be "self-imposed"). In an obvious sense, this second interpretation is not as directly related to the nature of the political system (or how laws are made) as the first. But in a more fundamental sense, the first is an example of the second. That is, the position, "I am obligated because I consented to abide by the decision of the majority" is entailed in the position, "I am obligated to obey that system of government to which I have consented." For this reason, I shall begin with the thesis that obligation to a system of government is based upon consent and return later to the democratic argument.

- The Doctrine of Pure Consent -

The social contract theory has been the most important interpretation of the consent doctrine. However, because of limitations of space, I do not wish to enter the controversy over the nature of consent found in this theory, whether, for example, we ever have, ever will, or ever should consent to a particular government. Fortunately, several theorists have employed a conception of consent that avoids the traditional pitfalls found in the social contract theory; and it is this formulation to which I shall confine my remarks.

The more recent formulations of consent are based not on a process of consenting but rather on a condition

of approval of or support for a particular government, ethic, or way of life. Two examples will serve to illustrate. According to C. W. Cassinelli, all that "consent of the governed" means is that a given individual has accepted a particular political system as legitimate. That is, said individual believes that a government or a group of people holding a particular philosophy have or should have the moral right to govern:

When the political theorists use the phrase "government by the consent of the governed" ...they may have in mind an attitude taken by the people toward the government.... Either "consent" refers to a widespread popular belief in the government's moral right to rule, or it has no meaning.¹

John H. Schaar in Loyalty in America interprets this belief in the moral right of a government to rule as "loyalty" and defines it as follows:

Political loyalty is a devoted attachment to the political ideals and institutions established in a community.²

Consent, then, is not an act but an attitude.³

How does this attitude, belief, or attachment operate as an obligation-incurring device? Supposedly, only if a citizen approves of a particular form of government, only if he believes in its "moral right to rule," only if he pledges his "loyalty," in short only if he consents, is he obligated to act according to its dictates. Thus, a communist in a democracy or a democrat in a dictatorship is obligated not to the present government but to his own beliefs. Schaar, Sidney Hook, and David Spitz⁴ all imply that this is exactly how the citizen assumes his political obligations. Further, this seems to be the only way he can become so obligated. I shall briefly indicate why

each of these three theorists holds this model of obedience.

Hook suggests that ethical standards for moral conduct cannot be established independently of each individual's personal political commitment:

...the limits of tyranny--the point at which disobedience is undertaken, the point of no return when disobedience turns to open resistance--cannot be laid down without reference to one's own political commitment. That is why it seems to me to be unrewarding to seek some general or universally valid answer to the political question concerning the justification of revolution on abstract ethical grounds alone.⁵

Somehow, then, the political question of justifying revolution is independent of the ethical question. And supposedly (if I interpret Hook correctly), a political justification of an act (would this be expediency? or would it be the act of making a political commitment?) could override the ethical condemnation of that same act. The assumptions seem to be that an individual must consent before he can become obligated and further that there are not any universal standards to determine in which situations he should consent.

Spitz indicates that why a communist is not obligated to obey in a democracy is that to demand morally his obedience would be to deny the very essence of democracy, namely the principle of generalized consent:

Now can it [democracy] without denying its very essence stand on any principle other than that of generalized consent. Consequently, democracy must recognize that for men who reject its values and refuse their assent to its system of order the dictates of democratic government appear

as the commands of an illegitimate power. And where that power can be defied, especially with some expectation of success, opponents of democracy will claim a moral right to do so. In this regard they claim no more, on purely formalistic grounds, with respect to democratic systems than democrats do with respect to oligarchial systems.⁶

But surely Spitz has over-simplified the issue here. Since a democrat can claim the same rights in an oligarchic system of government, to deny that right to a communist would be a repudiation not only of the principles of democracy (i.e., its procedure of law-making) but also of the model of obedience (i.e., the procedure for incurring an obligation), namely that consent is the necessary and sufficient condition for acquiring an obligation. And this the author is reluctant to do since he suggests that to claim some moral principle or ethic seems sufficient to incur obligations to that principle or ethic. Thus, since anarchists, communists, fascists, and democrats claim to act under different conceptions of justice, none has the moral authority to impose its conception on any of the others:

...while democracy must, in defense of its own values, reject the scheme of justice proposed by the anti-democrats, it must at the same time face the uncomfortable fact that on intrinsic grounds it lacks an absolute moral standard in terms of which it can justly disavow the right of civil disobedience to those who deny the validity of the social order.⁷

I return, therefore, to the position that where consent is withheld from the entire system of order itself, democracy's claim to obedience with respect to such dissidents rests on power, not on a universal morality.⁸

Again then, the model of obedience is based on consent necessitated by the lack of universal moral standards.

Schaar has the most innovative interpretation of the role of loyalty in the citizen's assumption of political obligations. For him, loyalty, duty, and the attainment of individual freedom are inextricably intertwined, loyalty being the necessary pre-requisite for the other two:

What we feel to be our duties are in essence deductions from our loyalties. When we are loyal to something it means we have accepted a duty to support it by our actions and thoughts. In carrying out this duty we realize our freedom.⁹

Loyalty, then, defines man's duties and in the fulfillment of said duties he attains freedom. However, the value of loyalty lies more in the procedural operation of incurring duties rather than in the substantive object of that procedure. Again, the lack of universality of moral criteria accounts for this:

The democratic state lacks moral authority to impose duties upon any person who refuses to subscribe to democracy itself....¹⁰

Of course none of the three theorists specifically stipulates that consent is the only way every man can become obligated. As a matter of fact, when faced with the inadequacies of consent as both a necessary and a suf-

ficient device for incurring obligations, they all imply that other sources may also create obligations. But as will be seen by the type of moral guide that is provided for the civilly dissident, none of these other sources modify the implications of a consent conception of obedience. Specifically, the discrete model of perfect obligations still obtains.

It seems legitimate to ask at this point how this doctrine differs from the more traditional formulations of consent?

The major criticism with consent in the social contract doctrine is that the citizen's obligation to obey the law lay not so much in a special relationship between him and his government (i.e., his consent) but in the actual performance of that government (i.e., its respect and promotion of certain fundamental rights). This is the reason why Pitkin re-names the theories of Locke and Tussman the doctrine of "hypothetical consent."¹¹ Because the real basis of political obligation lies in a substantive moral criterion and not a procedural one, consent becomes irrelevant and, as Pitkin suggests, can be discarded. The situation is entirely different with Schaar, Hook, and Spitz. Because it is not coupled with a moral recommendation for certain forms of government, consent cannot be discarded. To be sure they all prefer democracy, but that preference does not carry any moral weight. The reason for this is, of course, that there are no universal or absolute moral standards for determining which form of government warrants the citizen's consent. The basis of political obligation

that seems to be here employed, then, can be summed up as follows: Since there are not any universal moral criteria available for judging systems of government and therefore determining which system deserves the citizen's consent, an individual is obligated to obey only on the basis of his consent. I shall call this the doctrine of "pure consent".

Two objections can be made at this point. First, the pure consent doctrine sounds like either a theory of or moral relativism or a glorified version of conscience theory. If this were true, then of course, it would leave the citizen morally free to define all of his obligations and therefore to determine which laws he chose to obey and which to ignore. The second objection concerns the assumption that consent is sufficient as a basis of political obligation. Is it reasonable that I should be bound unequivocally to my past consent, that because I consented to democracy yesterday, I cannot withdraw my obligation today when I no longer approve of it? The three theorists successfully handle the first objection but begin to make contradictory statements in trying to deal with the second.

The doctrine of pure consent is not designed to leave the citizen completely free to pick and choose the laws that he will obey. Spitz clearly indicates that loyalty to a political system entails obedience to the dictates of a government operating under the principles of that system:

If a man's loyalty is to the system, then obedience cannot be determined solely by immediate approbation. He cannot attempt to evaluate the law simply in terms of its expressed content....¹²

Schaar states that individualistic doctrines, like Thoreau's, in which one's loyalty is only to one's conscience, do not raise any "meaningful moral questions" because under such systems of morality conflicts of obligations are impossible.¹³ For Schaar, however, the conflict between private morality and political authority is real. As for Hook, he explicitly denies that his thesis forms some kind of relativistic ethic:

...if it is true that the reflective good of one side is incompatible with the reflective good of the other, what is shown is not that the moral values at issue are devoid of objectivity but that they lack universality, not that they are relativistic, in the sense that they are arbitrary and subjective, but that they are relational--that is to say, related to the kind of creatures we are or may become.¹⁴

Here is the crux of the matter: What type of moral theory is this in which objectivity is not a means of establishing universality? The apparent contradiction (and therefore the charge of moral relativism) is averted as follows: There are a number of objects to which an individual can pledge his loyalty. And these objects vary according to different principles of justice, different conceptions of the reflective good, and different formulations as to what we are or may become. Further there is no moral way of legislating as to the best principle, conception, or formulation. Therefore, the individual is free to choose among these different objects. But each object of loyalty does carry its own set of obligations and further, its own set of objective (i.e., inter-subjective), moral standards for determining when those ob-

ligations have been fulfilled. Only within each system, then, are there criteria by which the individual can act. Thus, only the relationships among systems can be called "arbitrary and subjective." This ethic differs from moral relativism in that it does include objective moral standards to determine both the obligations and the conditions of their fulfillment--albeit such standards are parochial, not universal. In short, I may be free to choose my loyalties; but having made a commitment, I am morally bound to honor it. Hence, unlike conscience theory or the ethics of relativism, my immediate approbation of a given law does not define my political obligations. How adequate is the doctrine of pure consent as a theory of political obligation?

I suggested earlier that any adequate theory of political obligation must answer the following two questions: First, when is civil resistance justified? Second, which forms of resistance are morally permissible? With regard to the doctrine of pure consent, these questions have to be answered in all of the following circumstances: (1) an individual who rejects the current political system (e.g., a democrat in a dictatorship); (2) an individual who has accepted a given system in the past but now rejects it (e.g., the democrat who becomes a communist); (3) a person who accepts the present political system but rejects the government of the day as not conforming to the principles of that system (e.g., a Czech communist under a Russian puppet regime); (4) a person who accepts both the system and the government but rejects a particular law because (i) it does not conform to the principles of that system (e.g., voting registration restrictions) or (ii)

it is unjust (e.g., the foreign policy of a democracy). I shall examine the first two sets of circumstances here because it indicates clearly the nature of the model of obligation being employed. The other sets will be discussed in the next section in the context of special problems of democracy.

How are relations to be characterized in a polity in which some individuals do not accept the existing system of government? According to Schaar, neither group has any obligations to act in certain ways toward the other:

Those outside the group are strangers to whom no loyalty or obligations are owing.¹⁵

This lack of obligations to "strangers" certainly would help understand Spitz's earlier statement that democrats have a standing right to overthrow tyrannical governments.¹⁶ Hook explains further the nature of this right:

It is axiomatic that anyone who takes his point of departure its commitment to self-government cannot in principle be opposed to the revolutionary overthrow of an oppressive and tyrannical minority government anywhere, although he may conclude in specific cases that the occasion and times may make such action unwise.¹⁷

By "in principle," Hook means that a democrat may forego advocating the overthrow of a dictatorial regime because such action would be ineffective or lead to greater repression and suffering. But amazingly, Hook then concludes:

None of these situations [where the action leads to greater suffering] in any way affects the validity in principle of democratic revolutions in oppressive nondemocratic countries.¹⁸

Because all moral obligations are derived from an individual's consent or approval, the restriction to refrain from rebelling in those instances in which such action may be unwise (i.e., lead to greater suffering) may or may not be moral. Supposedly, if a pacifist disapproves of violence, then he is morally forbidden to use it. But if an individual does not recognize those restrictions (and evidently, a democrat does not), then he may proceed to rebel and thereby cause greater suffering; and even though he knows his action will in all likelihood result in such suffering, he is still not morally blameworthy! Surely, if some one is limited in doing something in practice (i.e., the likelihood of adverse effects is known to be great), then he is limited in principle. It is a strange moral rule, indeed, that has the rider that even in cases where it applies, it still should not be followed. Again we are confronted with the ambiguous "should". And again the contradiction that we should not do what we should do arises because the practical or tactical considerations do not carry any moral weight and therefore cannot override the moral duty.¹⁹ The reason why the possibility of repressive governmental measures are not morally relevant is that obligation is conceived as something that an individual either has or does not have, that is, obligations are considered discrete. To include these other considerations would mean that a democrat had at least some obligation to a totalitarian regime and to the people it affects. But because this would introduce universal moral standards, these obligations would not be based upon the doctrine of pure consent; and therefore the model of obedience would have to be radically modified.

Since Hook seems unwilling to consider these other factors as moral obligations, we reach the startling conclusion that the political condemnation of an act (i.e., the suffering involved in that act) can override the ethical justification of that same act (i.e., the moral right to commit that act at any time).

I suggest that a condition of moral freedom best characterizes the relations in a polity in which some individuals do not accept the existing system of government. However, the freedom to act here is prior to obligation; whereas under performance, it was achieved after the conditions of obligation had been abridged. That is, under the doctrine of pure consent an individual need never morally justify civil resistance to any government or political system of which he disapproves. This situation is reminiscent of the social contract's state of nature:

Whoever stands outside the agreement is still in a state of nature with respect to the people created by the agreement.²⁰

In the following two passages, Hook and Schaar narrate their conception of the relationship among groups that have no obligations to each other:

Lest I be misunderstood, I should like to repeat that nothing I have written about civil disobedience implies that there is an obligation on the moral and religious dissenter to accept the authority of the political system of democracy blindly, to forego his moral claims to defy the entire structure of the democratic ethos on the grounds that it imperils some sacred value or some assurance of salvation which for him is beyond price and commands an unpostponable allegiance. In other words, if individuals refuse to play within the rules of the democratic

game on the ground that these rules are too frivolous for the great stakes at issue, they are free to act as if they are at war with the democratic community. By the same token, democrats are just as free to crush them if they resort to war instead of argument.²¹

The chief point is that the state has no inherent moral standing to require obligation when consent is lacking....For where generalized and voluntary loyalty to the polity is lacking, questions of morality are usually idle: the only appeal is to force and expediency. Finally, it must be remembered that just as the person who has not consented to the system of democratic authority cannot morally be compelled by that authority, so also does he himself lack any moral basis from which to impose his own demands upon the state. In short, where voluntary consent is lacking relations between state and citizen are essentially relations of war in which both sides use the stratagems and implements of battle, and in which either may or may not grant quarter to overpowered opponents.²²

Hobbes could not have described his state of war any more viciously. This conclusion is the necessary result of having a condition of moral freedom at some point in one's conception of obligation. Consider, for example, that theories relying on a system of rights as a basis of political obligation were morally incapable of making the simple differentiation between civil disobedience and violent revolution. Once the limits of obligation had been abridged, these considerations can only be tactical; and therefore the individual was morally free to choose among them. Whether it is described as the uneasy peace of the state of nature or the brutishness

of a state of war, this condition of freedom forms an integral part of the discrete model of obedience and therefore of all theories of political obligation employing said model. This type of freedom and its implications of a "state of war" will always be present as long as a theory of political obligation is concerned only with the basis of obedience and not also with the conduct of disobedience.

Since by rejecting the present system of government the civilly dissident can gain the right to disobey at any time and to choose any form of resistance, the doctrine of pure consent proves totally incapable of providing adequate moral guides for those advocating revolutionary changes. Evidently, the same condition of moral freedom prevails for those who accept a particular political system but reject the government of the day for failing to conform to those principles.²³ The doctrine of consent does, however, have limited success with a third set of circumstances under which resistance may be contemplated, namely the acceptance of both system and government but disapproval of a particular law. I shall consider this third situation in terms of the argument that because of certain procedural arrangements political obligations are increased for those who consent in a democracy.

- Democracy and Political Obligation -

For two reasons, democratic procedures are said to increase the citizen's obligation to obey the law. First, by agreeing to abide by the decision of the majority, by participating in the political process the citizen incurs

a special obligation to foresake illegal forms of dissent:

The obligation to obey law rests, in a democracy, squarely on the assumption that the citizen will have had the right to participate, even if unsuccessfully, in the law-making process.²⁴

According to Jones, then, in the United States only the Negro may with moral justification commit civil disobedience. But surely even this is not quite correct: only those who have been denied voter registration should be allowed to disobey; the others have obtained the vote and therefore must submit to the majority decision. Further, for those few who can morally disobey surely they need not be restricted to civil disobedience--because they cannot participate they have no obligation and therefore may choose any form of protest that they find convenient, including of course riot. In short, the right of participation carries with it the corresponding duty of abiding by the decision of the majority.

The second method by which democratic procedures are said to increase the citizen's obligation to obey is by the acceptance of the benefits of the system and the intention to continue to so accept. To ignore both this factor and the previous one would be a violation of what Rawls has described as the "principle of fair play":

Now I want to hold that the obligation to obey the law, as enacted by a constitutional procedure, even when the law seems unjust to us, is a case of the duty of fair play as defined. It is, moreover, an obligation in the more limited sense in that it depends upon our having accepted and our intention to continue accepting the benefits of a just scheme of cooperation that the

constitution defines. In this sense it depends on our own voluntary acts.²⁵

Because one voluntarily accepts social benefits and voluntarily participates in the system, both of these factors can be considered as part of the doctrine of pure consent. The problem, then, is to determine how binding is the fact that someone participated in the past, derived social benefits in the past, or consented in the past?

Few theorists would want to say that an individual can be bound absolutely by his past actions. This obviously would be a vicious doctrine. Therefore, cases may arise in which the content of the law overrides its source and thereby justifies some sort of resistance. For Hook, a democrat may disobey for the purposes of re-educating the community--as long as he accepts the legal sanctions for that violation, and this may include death.²⁶ If he resists punishment, then his act is treasonous; and while he may morally continue to resist, he cannot do it as a principled democrat. Spitz states that the only cases in which disobedience is justified are those in which the disputed law poses a threat to the principles of a democracy.²⁷ Schaar, too, would seem to feel that a citizen while remaining a democrat may still disobey particular laws. Evidently, the individual has both "the right and the duty" to determine for himself what is in the best interests of the object of his loyalty.²⁸ The democrat cannot escape this moral responsibility by pleading that a particular law or policy was a majority decision:

...if the majority acts immorally or imprudently it is your duty as a loyal citizen to agitate for the reversal of wrong or unwise actions. Until such agitation triumphs, you have but two choices: you may (you usually will) acquiesce in the decision, or you may take Thoreau's perilous path of civil disobedience.²⁹

It seems odd that in a particular instance of injustice one can either obey or disobey and either action means that he is fulfilling his responsibilities as a moral agent. This is only an indication of the confusion that results from the use of the discrete model of obedience.

If consent or participation or acceptance of social benefits form the necessary and sufficient conditions of obedience in a democracy, then either one is obligated to obey or one is not so obligated, depending on one's past action. If one has consented, participated, accepted benefits, then according to the theory of objective relativism the citizen is not free to determine the conditions of fulfillment of an obligation. The content of a law, then, cannot override its source for those who have consented. When they talk of a limited use of disobedience by the democrat, Spitz and Hook are just contradicting themselves because according to their formulation loyalty means that immediate approbation does not define one's obligations. To be consistent with this model of obedience, one must adopt the following position that Schaar takes:

...if a law has been passed by a legal and legitimate majority or their representatives, then no citizen who subscribes to democracy, and who does not argue that the methods by which the law in question was passed were

undemocratic, can claim personal exemption from it just because he thinks it destructive of democracy.³⁰

But of course, this conflicts with his assertion that a democrat has the moral responsibility to agitate for the reversal of a social wrong and that this responsibility cannot be satisfied by appealing to a majority resolution. The crux of the problem is that to disobey justifiably a citizen who has consented, etc., but yet finds a particular law morally offensive must be released and not released from his moral obligations. And this requires a much more sophisticated model of obedience.

The assumption that if the principles for law-making are adhered to, then the justice of the laws is assured cannot be made. To be sure, the integrity of the procedural mechanisms for law-making must be maintained; but to ignore substantive considerations of justice is to treat majority decision-making as an end and not the means to the attainment of the good life. Content must act as a moral check on the speed of deliberation by government. For this reason, the use of resistance cannot be limited to those laws that threaten the procedural arrangements; the relieving of economic and social injustices are the ends of such arrangements and they, too, may justify resistance. It seems very odd, indeed, that where a communist or the disenfranchised Negro can actively protest and resist social injustices, the principled democrat must sit idly by.

The role of consent in the process of acquiring

political obligations needs to be re-assessed. Certainly, it cannot be considered as sufficient to incur political obligations. The suggestion by Michael Walzer³¹ that obligations incurred in small, primary groups must always take precedence over larger, secondary associations like the state because otherwise one would be "selling out" his primary group is absurd. Presumably this would justify morally all crime that involved more than one person. Seldom, if ever, will pleas of loyalty justify unjust acts.

Just as certain that consent is not sufficient to justify obedience is that it is not necessary either: The conclusions of the above analysis indicate that those political obligations to which a citizen consents form a very small part of his total responsibilities.

Somehow, the conception of civil resistance as an inalienable right that one surrenders for various reasons but may be restored under certain conditions is a misuse of the word "right." A more careful examination of the language of right, duty, and right action is required. But for the time being it would be helpful to consider those arguments that suggest that in a democracy the obligation to obey the law decreases, not increases.

- Democracy and Political Obligation--II -

Several theorists have suggested that in a democracy civil disobedience should be encouraged rather than discouraged. They imply that there is something special about the character of civil disobedience--either its means, but more often its ends--which makes it easier to justify than other types of action. These theorists

introduce a completely different conceptualization of civil disobedience and its role in a democratic society. Essentially, the difference between this and the more traditional conceptualization is whether or not direct action is meant as a "stimulus to conventional politics" or as a "complete method of politics."³² To assess this formulation, one must determine just exactly how extraordinary an event civil disobedience should really be.

As a stimulus to conventional politics, civil disobedience is conceived as an infrequent event necessitated by an occasional, grave misjudgment by the government. The major purpose of civilly disobeying is to protest and publicize the injustice and thereby to put direct pressure upon the government. In short then, for much of the time and for most of the laws, there need not be any questioning of political authority. Civil disobedience is reserved to those few occasions in which grave social injustices cry out for action. Otherwise, social reform should be achieved within the normal, legal processes.

The other tradition of political thought conceives of civil disobedience as a continuing process of dissent necessitated by certain features of the modern polity and the psychological needs and characteristics of modern man. The nature of both the polity and the man warrants consideration.

The complaint against the modern democratic polity is that the possibility of creative social reform through persuasion and education of the community are being thwarted by the actual function of political institutions. Christian Bay explains why:

Behavioral research has established the wide distance between the classical ideals of democracy and the modern realities of rule by contending minorities, some more privileged than others with respect to economic and political power.³³

Because of these minorities, it is becoming increasingly difficult for certain groups and individuals who have legitimate grievances to gain representation within the political system. For these groups to follow the democratic credo, "Wait, work within the system until you can persuade others of the justice of your cause" would amount to acquiescing to the status quo. In other words, the right of participation is not enough; there should also be some expectation of being effective. Civil disobedience has proven effective for those groups that otherwise had no hope for the redress of their grievances; and the feeling is that a growing usage of direct action can improve the quality of participation and speed up governmental recognition of social problems. For Christian Bay it is the necessary pre-requisite to democracy in mass society.

Some theorists would be dissatisfied with this "secular" account of the need for the expanded use of civil disobedience. They feel that as a purely political device directed solely at the power structure, civil disobedience can only achieve limited success. Radical changes in the political institutions cannot be achieved without similar changes in man himself:

People cannot improve society without changing themselves, because constructive development of institutions is

dependent upon the mental and spiritual growth of persons. It is equally true that human beings cannot change permanently unless their institutions also change.³⁴

The most important function of direct action, then, is its potential as a means for humanizing the state and for transforming society by changing how people are motivated:

But we must never forget that there is something within human nature that can respond to goodness, that man is not totally depraved, to put it in theological terms, the image of God is never totally gone. And so the individuals who believe in this movement and who believe in non-violence and our struggle in the South, somehow believe that even the worst segregationist can become an integrationist. Now sometimes it is hard to believe that this is what this movement says, and it believes it firmly, that there is something within human nature that can be changed, and this stands at the top of the whole philosophy of the student movement and the philosophy of non-violence.³⁵

But to achieve such goals, the civil dissenter must himself attain moral and spiritual excellence. For King, he must adhere to the ethic of love, to have an "understanding, creative, redemptive, good will to all men."³⁶ Only at this stage of moral development can the civil resister willingly accept the violence that may be directed against him and thereby turn his own suffering into a creative social force.

While it is beyond the scope of this essay to undertake a detailed analysis of this position, it is

important to take note of at least two points. First, it is not an unreasonable demand nor a gross violation of the principle of fair play to expect that one's participation in the political process will have some effect. Citizenship should mean not only the right to participate but also the right to participate effectively. Second, the type of personnel--their motivations and internal moral strength--is going to affect the moral justification of a given act of civil disobedience. More importantly, as we shall see it will also affect our conception of moral responsibility and the conditions of its fulfillment.

CHAPTER IV

One may be accused of not being very sophisticated if he takes seriously the concept of a state of war. Most theorists probably do not feel that the absence of political obligation licenses any type of behavior. Yet as long as a theory of political obedience does not make any moral demands on the actor once his right of resistance has been established, then the resulting model of obligation is going to remain rather primitive. This lack of sophistication pervades not only the philosophical conceptions of political obligation but also the empirical propositions concerning the nature and strength of social bonds. Some of these propositions form the third basis of political obligation, namely the interests of the society.

When it is thought that a particular action is going to have social effects, then, the nature of those consequences is a relevant consideration to any justification for carrying through with the act. This, of course, is the second general kind of moral criteria for determining proper conduct--the teleological criterion. It asserts that because of the possibility of adverse effects the implementing of any moral rule may have to be forestalled. Several theories of political obligation have been built on various assumptions concerning the social effects of resistance to the law. Charles Hyneman indicates the stage at which the consequences of dissent must be taken

into account:

...when the demonstration [i.e., the protest] is abrasive to other people, a call for inquiry must be sounded.¹

The task, then, is to determine the extent of the moral limitations placed upon the actions of a civil dissenter because of the possibility that flagrant violations of the law will jeopardize social order and stability. This threat to social stability forms the empirical side of the philosophical concept of moral freedom. The two are often found together probably because the consequences of moral freedom are to be feared precisely because of the possibility of a general breakdown of law.

- The Case for Stability -

Richard Wasserstrom suggests that most philosophers have considered questions on political obligation only in the context of a revolution.² According to Sidney Hook, the traditional justification of obedience has been that it is better to obey an unjust law than, by disobeying it, have all laws brought into disrepute.³ The two points are related. Underlying much of the discussion on political obligation is the great fear that any intentional violation of the law can lead to a total breakdown of the legal system. The following excerpts indicate just how central this fear of anarchy really is to many theories of political obligation:

'What complaint have you to make against us which justifies you in attempting to destroy us and the state?'⁴

A small degree of experience and observation suffices to teach us, that society cannot possibly be maintained without the authority of magistrates, and that this authority must soon fall into contempt where exact obedience is not paid to it.⁵

The question of obedience thus raises far more than the mere question of the agreement or disagreement in a particular case between the sovereign's law applying to the case in hand, and what the individual's private conscience tells him the law ought to be; properly approached, it brings dominantly into the foreground the large issue of the desirability of preserving public authority and civil society itself.⁶

Experience demonstrates that it is not a far step from what to many seems the earnest, honest, patriotic, kind-spirited multitude of today to the fanatical, threatening, lawless mob of tomorrow. And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends.⁷

There is the tendency, an empirically observable tendency, for public disobedience to law to spread from those who occupy high moral ground to those who dwell on low ground with consequent growth of disorder and insecurity.⁸

If there is an empirical tendency for public disobedience to lead to disorder and insecurity, then it certainly would be a relevant consideration to the justification of civil resistance. Two questions, then, need to be answered: First, is there such a tendency? Second, even if there is, does this mean that social consequences al-

ways override concerns of justice? Because the second question provides a good insight into how several theorists have erred in their conceptualization of the problem of justifying resistance, I propose to assume that disobedience does pose a threat to the social order and return to the validity of such an assumption later.

Certainly, most of the theorists who assert that disobedience can lead to general disorder do not wish to maintain that concerns of social utility always override concerns of justice. If utility were always supreme, then an individual would be expected to endure the most tyrannical of governments for the sake of order. Hobbes may be willing to make such a sacrifice, but certainly a good democrat like Hook is not. But by rejecting absolute obedience, the stability theorists are lead to a very perplexing dilemma: how can the necessary safeguards against tyranny be reconciled with the dangers of anarchy? As a matter of fact, Hook among others has stated the problem in almost exactly these words:

How do we escape the dilemma between the acceptance of tyranny, on the one hand, and anarchy, on the other?⁹

The most popular way out of this dilemma is to impose stringent conditions both as to when and how resistance can be justified and as to how one may conduct such resistance.¹⁰ Both sets of conditions need to be examined.

The first set of conditions consists of two parts. In response to the question, "When is civil resistance justified?" the following condition cannot be violated:

civil resistance is never justified until all peaceful and legal means of redress have been exhausted:

...resort to civil disobedience is never morally legitimate where other methods of remedying the evil complained of are available.¹¹

So stringent is this condition that even if resistance is more effective and involves less cost than existing grievance procedures, as long as the latter are a viable alternative, the former cannot be justified. This is exactly the reason that Nathan Glazer condemns the use of direct action to achieve reforms at the Berkeley campus:

But as long as these more peaceful paths were open (and they were), they should have been taken, even if they were less effective, and involved more pain and trouble.¹²

The problem with this condition is that it is not at all clear what it means for a grievance procedure to be "available." We have already discussed the discrepancy that exists between democratic ideals and political practices. The consequence of this fact is not only that normal procedures are often painfully slow and the evil too great to wait but that because of minority control those procedures do not even provide hope for meaningful debate let alone opportunity to effect change. Consider, for example, that despite significant dissent on the Viet Nam war, neither major party carries a firm, concrete commitment for a speedy peace; thus the American electorate does not even have the opportunity to decide

democratically on the extent and nature of the involvement in Southeast Asia. No doubt, if effective means of legal change were available, the justification of civil resistance would be much more difficult. But surely the all pervasive plea that, after all, one is living in a democracy is no longer sufficient to demonstrate that effective, legal means are in fact available. More sophisticated criteria for effectiveness and availability must be devised. This is especially true of democracies.

The second part to the set of conditions stipulating when and how resistance is to be justified is the question, "Who is to make the decision to engage in civil resistance?" Because of the supposed consequences (the total breakdown of law), this decision is a very grave one and must not, therefore, be distorted by personal interests. "The great danger of individual subjectivism"¹³ must be avoided. To minimize misjudgment, then, one of two procedures have been proposed: either the decision must be made by competent persons or it must be made in conjunction with a group and never by the individual alone. Thus, the right to make moral decisions is extended to groups but not to individuals. But surely, this is only to beg the question. The number of people making a particular judgment may give psychological support to a given cause but it need not provide a sufficient moral justification. To be sure, it is arguable that disobedience supported by a group is more likely to be justified. But my criticism is not directed at this position. I am merely suggesting that reliance on group decision-making seems incompatible with individual moral responsibility, i.e., the stipulation that in the final analysis the individual must make

his own moral decisions and give his own reasons and that he cannot leave this responsibility to the state or any other group. It could be that those theorists advocating the need for group decision-making were not denying individual moral responsibility. Rather they only wished to suggest that the individual should consult the widest possible sources of information. Of course, if this is what they are saying, then I have no objection. But it seems odd that they would stipulate this condition as a special moral criterion for justifying civil resistance when it is already a necessary pre-requisite for any moral justification. The oddity takes on even greater proportions when it is realized that this condition is stipulated not only for civil disobedience in a democracy but also for resistance in a totalitarian regime. Presumably, social stability would be of less concern in the latter instance and would necessitate fewer precautions to prevent the danger of individual subjectivism. The fact that less precautions are not taken in instances of extreme tyranny makes me suggest that so great is the fear of social disorder that some theorists are even willing to deny individual moral responsibility.

Once the right to engage in civil resistance has been established, one must decide upon a response to redress the injustice. The criteria used in picking that response forms the second set of conditions by which both anarchy and tyranny can be forestalled. The key problem is to find a method of resistance that is consistent with the respect for law and order. Stability theorists have

seized upon civil disobedience, or rather their particular conception of civil disobedience, to fulfill this role.

John Rawls described civil disobedience as the "last corrective form of political dissent within the limits of fidelity to the law."¹⁴ How is it that civil disobedience falls within respect for or fidelity to the law and other forms of resistance (whatever they may be) do not? To be respectable, civil disobedience must meet at least three conditions.

Darnell Rucker in his article, "The Moral Grounds of Civil Disobedience,"¹⁵ provides one of the better expositions of the first condition: The citizen can reject the moral demands that society makes upon him and still maintain his respect for law and order as long as he recognizes the legal right that society has over him. Only defiance of both the legal command and its punishment is acting outside the structure of the law; acceptance of punishment lies within the law. This, surely, is the argument that Socrates makes (if the Apology and the Crito are taken together): he rejects the moral claim of the state to dictate the conditions of justice and thereby to command him to commit what he would consider an unjust act; yet so that the social order may be preserved, he willingly submits to legal sanction when he fails to carry out that command. This, also, is the argument that Hook makes when he states that any resistance to the punitive processes of the law is an attempt at the revolutionary overthrow of the government.¹⁶ The major objective of civil disobedience, then, is protest or education of the political community and not an attempt to force or coerce the government into making concessions.

The second condition that civil disobedience must meet is closely related to the first: to be justified civil disobedience must be effective. If disobedience in a given instance is not an effective means of bringing about reform, then, because it unnecessarily jeopardizes the social system it cannot be justified. Hence, there must be a close connection between the proposed action and the objectionable law. Traffic jams, for example, have nothing to do with foreign policy and therefore should not be employed as a method of protest. The more indirect the act of disobedience, then, the less likelihood of its justification. The final condition is that civil disobedience must be non-violent, as Hook says, "peaceful not only in form but in actuality."¹⁷

Much of the discussion on civil resistance, then, has been in the attempt to develop a respectable mode of illegal dissent. The following is a description of a "respectable" act of civil disobedience:

It is quite sufficient to preserve for justified acts of civil disobedience a ritualistic character that distinguishes them from all other acts of law-breaking and maintains their status as a politically tolerable form of public protest.¹⁸

So important is the distinction between acts that exhibit respect for law and those that do not, that several theorists have felt that there can be only two justifiable methods of civil resistance, that mode of dissent that is compatible with respect for law (namely, non-violent, passive civil disobedience) and that mode that is not (namely, violent revolution). According to Stuart Brown,

"there is no third class of justified acts."¹⁹ In short, either the objectionable social wrong justifies overthrow of the social and legal order or it does not. In the next chapter, I shall challenge the proposition that only one mode of dissent lies within respect for or fidelity to the law. In the meantime, I wish to consider how this proposition has affected the justificatory process with respect to civil resistance.

In attempting to develop civil disobedience as a form of resistance falling within respect for law and order, several theorists have confused the problem of defining civil disobedience with that of justifying it. They want to treat civil disobedience as the aggregate of both the characteristics that define it and the characteristics that may be responsible for ensuring its respectability. This confusion distorts the justificatory process which supposedly consists of the following three stages: (1) to determine by comparing with a previously-formulated set of conditions whether a given situation justifies some form of resistance; (2) to distinguish in some detail between acts of resistance that are within the structure of law and those that are not; and (3) to determine once some form of resistance is justified whether the evil is sufficient to risk anarchy, in which case anything is justified, or whether it is not sufficient to risk anarchy, in which case only (non-violent, passive, etc.) civil disobedience is justified. This is to ignore completely the wealth of alternatives that are available to the potential dissenter. Protest includes both peaceful demonstration and

riot. Civil disobedience can be non-violent and passive or violent and defiant of law enforcement. Rebellion and revolution can be violent, but it need not.

The problem, then, is that if moral responsibility is attached to all stages of civil resistance, the terms 'civil disobedience,' 'rebellion,' and 'revolution' may themselves be too broad when one is trying to justify particular responses. The difficulty is that one may become confused and divorce the constituent elements of an act from its justification. That is to say, the various features of civil disobedience--public, illegal, non-violent--are really "dimensions of a particular act" or as Charles Hyneman would say, "activity-types."²⁰ And it is not the aggregate of the dimensions but the individual options that need to be justified. Stability, then, must be related to these individual aspects of civil resistance.

I stated at the opening of this present discussion that there was some doubt as to the validity of the assumption that public disobedience can lead to general disorder and chaos. I now wish to assess that assumption.

Because of the gross simplicity of the stability proposition, several theorists have rejected it out of hand. They claim (and surely they are right) that it is just wrong to say that if a few people intentionally and publicly violate a law, everyone may begin to do it:

There may be no specific boundary line between the minor offense and the major offense, but this does not justify a statement that one little step invariably leads to another big step. Each of the steps between the known first and the conceivable first

and the conceivable last is a point at which it may be possible to stop the march toward total breakdown of the law.²¹

The reason that this criticism has been taken to be adequate is that the case for stability has been argued so poorly. The whole issue needs to be re-assessed.

- The Case for Stability--II -

If a political actor is morally restricted by the interests of society, then this factor will serve as a criterion with which one can judge the consequences of civil dissent. If, in a given instance, civil resistance can be justified, then the political actor must pick a response that creates the least amount of disruption in the body politic. Several studies have been devoted to devising such a response. The major criticism of this criterion is that because of the simplicity of its empirical assumptions, the argument distorts both when civil resistance is justified and which form may be used. By over-emphasizing the fear of the possibility of the breakdown of law, it in practice fails to differentiate between conditions justifying civil disobedience and those justifying violent revolution. This failure has led some theorists to reject the stability criterion completely. As I suggested, this would be a mistake: a re-assessment is in order.

The adequacy of the stability criterion needs to be re-evaluated in the light of at least three considerations.

The first point is minor. It is only that the stability argument is limited to those acts that can be

classified as civil disobedience. That is, if the question of stability is a bona fide issue, then one must assume that the injustice being protested against is not sufficient to warrant anarchy.²²

The second consideration is that the stability argument must be related to the question of violence. Given that it is not a tactical response by a revolutionary, can violent civil disobedience ever be morally justified? Or is it that the needs of stability restrict all uses of violence to the revolutionary overthrow of the government? As long as there are no other considerations (for example, intolerable amounts of suffering may result), the issue is an empirical one: how much disruption can a particular nation withstand? This surely is going to vary from country to country, and the reply that some violence need not lead to general disruption of the social system is insufficient to dismiss the problem. Consider two examples, France and Germany. The justification of even similar forms of dissent would surely differ between the "immobilisme" of the Fourth Republic and the stability of the Fifth. A similar comparison could be made between the Weimar and Bonn Republics.²³ The demands for stability, then, may have to take precedence over some attempts to redress injustice. Because there is an important need here for more empirical research into the social and political effects of violence, the question must, for the time being, be left open. I hope to suggest a few considerations that may facilitate this research.

The final consideration is that the stability argument must make a distinction between the effects of individual

dissent and the effects of organized protest and resistance. Depending of course on the size of the group, the latter are usually going to be of greater consequence to the body politic.

With regard to the justification of violent, organized protest, two empirical questions need to be answered. First, does the rise of violence and lawlessness to correct injustices and inequalities between competing groups lead to more violence and lawlessness in the relationships between those same groups? Second, does lawlessness in one area of social discontent lead to lawlessness in other areas? I shall discuss each of these separately.

The proposition that violence leads to more violence should be assessed in terms of two points of reference. First of all, one must determine the reaction of other groups to the violence and lawlessness of a competing group. Then, one should ascertain the "tolerance level" of the political community to violence. Let me begin with the former.

Several theorists maintain that the use of violence is self-defeating because it only leads to continuing enmity and distrust among the competing groups. The best example of this is the relations between black and white America. While riots may initially prompt civic investigations into the social conditions of the ghettos and lead to more governmental programs, the long-term effect is going to be demands for law and order and hence for armed suppression:

I am reminded of the argument that the Watts riot will lead to more government

programs for the Watts area than a hundred peaceful meetings. Quite true. But what has it done to the long-term relations between Negroes and whites? And if it increases fear and distrust, will the next riot lead to the same effect, or will it lead to greater counter-violence?^{23A}

Governments do react harshly to violent disobedience; they often show little patience for even peaceful demonstrations. Further, bitterness and resentment is often the legacy of attempts at destructive coercion. The possibility of suppression and continued enmity are important factors in the calculations of means to achieve redress. But they are not the only factors. They must be weighted against the consequences of all other forms of action. Such deliberation may indicate that violence is still the most effective method with the least amount of suffering.

I suggested that the second point of reference for assessing the proposition that violence leads to more violence should be the tolerance levels of the political community to violence. Recent studies in Peruvian politics have suggested that violence can be an "institutionalized" method for dissent:

Nor should the use of violence be associated in all cases with general alienation and blind frustration, on the one hand, or with deliberate efforts to overthrow the political system itself, on the other. James L. Payne has argued forcefully that in Peru, for example, demonstrations and the threat of mass violence are an integral part of the system itself, the means by which labor groups bring pressure to bear upon the centralized executive..... Rather than constituting a threat to the

system's usual performance, mass violence has become a part of the regularized pattern of performance, a structured channel of access into the political system.²⁴

If the conclusions of this study are correct, then stability may be related not to violence or large-scale protest per se but rather to the acceptable modes of behavior for dissent in a particular community. In trying to set a moral guide for the conduct of civil resistance, one should probably talk more in terms of such modes of behavior than the esoteric nature of the activity-types.

The implications of this last statement are significant. Consider, for example, Christian Bay's thesis that civil disobedience is a necessary pre-requisite to achieve a truly democratic (and therefore moral) society. The above propositions suggest that the nature of the society and its acceptable modes of behavior affect the consequences of employing a particular activity-type. One cannot advocate unequivocally, then, that civil disobedience will achieve a particular set of results. Bay may achieve the society that he seeks only because the "pseudo-democratic" polity already has certain elements conducive to moral growth. One of these certainly is that in a democracy civil disobedience has a greater probability of success. It would seem that the pre-requisite has a pre-requisite. It is this relationship between the chances of success and the levels of tolerance for dissent that is the more fundamental consideration and that has the greater implications for a theory of political obligation.

Let us now return to the question of whether or not lawlessness in one area of social discontent leads to lawlessness in other areas. Hyneman has stated the hypothesis as follows:

...this practice [of lawlessness] flourishes and extends its own boundaries. Expectation that law will be violated invites violation.²⁵

When associated with group activity this proposition may not be so absurd. Sidney Hook gives a psychological explanation as to how further lawlessness spreads:

The consequences of the widespread violation of the Prohibition Amendment, by making a crime a way of life and encouraging a cynical attitude towards law enforcement, were far more harmful to the community than the arbitrary and unjust restrictions which this ill-considered amendment placed upon the sumptuary habits of American citizens.²⁶

The racial strife of the present decade is thought by some to have a similar effect on the American community:

The deterioration of political obligation [i.e., devotion to public order] is contagious, it was triggered by the conflict over the Negro's status, and its effects on the polity will not quickly be rectified.²⁷

Presumably, lawlessness has spread from the struggle for racial equality to the protest over the Viet Nam War.

Even this more sophisticated defence of stability, however, is not conclusive. Viet Nam, for example, may itself justify organized campaigns to interfere with military recruitment and not merely be the result of a

general spread of lawlessness. Further, even if lawlessness has a tendency to spread, it need not be destructive. One theorist has suggested that obedience results largely from habit.²⁸ If this is true, then disobedience may undermine the respect for particular laws by making them morally aware of their actions with respect to obedience. Their refusal to obey other unjust laws would serve as an ultimate check on governmental action. This, after all, is part of Bay's rationale for extended use of civil disobedience. Extensive research into the consequences of social disorder is urgently required. In the absence of any concrete information, I think that it may prove most enlightening to consider an alternative thesis to the relationship of large-scale protest to stability.

Max A. Shepard defines law as "those rules of conduct which are generally obeyed."²⁹ Although there are several conceptual problems with defining law solely in terms of obedience (for example, how is one to classify disobedience of just laws done in protest of another law?), this formulation does draw attention to an important feature in the relationship between the law and the political community: effective law depends not only on the mode of enactment and not only on vigorous enforcement, but also on acts of obedience. Consensus on the validity of a particular law is a necessary pre-requisite for obedience to that law. What is the basis of this consensus? There are two answers: consensus can be a recognition of the legitimacy of the government of the day to make laws or consensus can result from the belief that a particular law is just or necessary. Both of these factors may re-enforce each other

(a legitimate government making necessary laws) or they may conflict (the same government making unjust laws). The moral challenge to the citizen results during these times of conflict. Supposedly, in most cases of conflict, legitimacy is sufficient to override the belief that a law is bad and hence to exact obedience. Other times however, legitimacy is not enough and disobedience results. What are the implications of this disobedience? There are three possibilities: First, disobedience could be a denial of the general legitimacy of the government. Second, it could be a denial of the legitimacy of the government to legislate in a particular area (e.g., the sexual behavior of adults). Finally, it could merely be a rejection of the present legislation as unacceptable while still recognizing both the need for legislation in this area and the general legitimacy of the government to formulate such legislation. Stability theorists have assumed that the first possibility is the most typical of instances of disobedience (especially if it is associated with violence). I suggest that for the most part the second and third possibilities are much more common occurrences (even if accompanied with violence).

Most people who disobey the law are not revolutionaries; they do not deny the legitimacy of the government; in fact they may even feel that on the whole it is a good government.³⁰ Yet for various reasons they find that they cannot accept a particular law. This does not mean that they have lost their respect for law. The challenge is only made to the government's failure to provide a just and equitable solution to a given problem. Analysts seem to forget that many examples of disobedience are normal, frequent occur-

rences. Shepard is right when he describes disobedience as a creative means of changing the law:

Disobedience is a creative factor as well as a destructive one, the destruction being in many cases the means whereby old rules are discarded in favor of newer regulations. The process of disobedience is a most potent means of changing the law, though the change may be gradual and imperceptible. Some successful disobedience is always occurring, to prepare the way for the creation of new rules.³¹

We have many examples in which laws on the statute books remain unenforced, homosexuality, abortion, dissemination of birth control information. All of these constitute examples of lawlessness. Yet when law is brought in line with practice, order in the area of dispute is once again restored. Lawlessness in one area, then, need not imply disrespect for laws in other areas:

Because of the relatively equal strength of the opposing groups throughout the country during the prohibition era, it may be suggested that there existed no law upon that subject for the nation as a whole. There was no general lawlessness, merely lawlessness in this special regard. Within the framework of law in general, there can thus be disobedience to specific rules without there being any direct challenge to the government or any great impairment of the social fabric.³²

Is this description applicable to social protest?

Initial information seems to indicate that it is. Many social groups have, at various times, been denied access to full participation in the social, economic,

and political institutions of a country. These have included labor, immigrant groups, indigenous ethnic minorities among several others. These groups have often resorted to violence in an attempt to achieve a more just and rewarding life situation. To assess the effects of these social disorders, we must again return to the question of why people obey the law. There are, of course, many reasons; but one surely is that it is in their interests to obey. Ultimately, then, obedience must rest on a community of interests, even if it is a hope for the future. It is this community of interests that both prevents the spread of lawlessness and hence a total breakdown of law:

There is always some law as long as there is any community, disobedience and change affecting only a portion of the law. Lawlessness is only partial.³³

Shepard had an important reason for calling illegal social protest "community disobedience."³⁴ It was to emphasize both that groups have their own vital interests that cannot be ignored and that social order is based upon a common set of interests. Of course, social conflict could tear a society apart. But, then, there is no community and rigorous law enforcement can only mean armed suppression. It is only with community that law and order can have any real meaning. When social groups begin to riot, community interests, not law enforcement is being ignored.

It is unfortunate that all social integration has not been achieved through rational, humane, and enlightened

compromise. But I suggest that basically there have been two sets of methods for change: a set for those that have a just and rewarding life situation within the social, economic, and political institutions of a country and a set for those who find themselves powerless outside said institutions. Many analysts have been held captive by the peaceful, ordered procedures that characterize the first set of methods. Hence, they fail to appreciate two things: first that these procedures are not available to the dispossessed (this makes a plea to act through the legal channels a plea to do nothing); and second, that the sporadic, frustrated, and sometimes violent acts that characterize the second set of methods need not jeopardize the ordered proceedings of the first nor imply disrespect for them. Shepard has summed up the problem well:

Only in a Utopia will there be monolithic and monistic unity in the law. The leading purpose of this article has been to suggest that the effort to warp all the social facts of diversity, all the realms of social conflict and disorder, to the Procrustean bed of a false and oversimplified legal unity will never furnish us with a clear or useful analysis of the realities we are supposedly analyzing. This ostrich-like unwillingness to recognize the central paradox that law is a great principle of unity inextricably entangled in uncertainty and plurality may well blind us to the true measure of order we have attained in our social relationships.³⁵

It is to be hoped that the cry of law and order that is being raised across the United States does not supplant community obedience with armed suppression.

CHAPTER FIVE

A criterion for assessing the adequacy of theories of political obedience was outlined in the beginning of the essay: it asked for guidelines to regulate the behavior of those engaging in civil resistance. An examination of several reasons offered as the basis of political obligation revealed first that the moral freedom implicit in the discrete model was extremely dangerous and second that the emphasis on the consequences of civil resistance to society was grossly insufficient. These conclusions raise two important questions: First, what is the extent and nature of moral responsibility in relation to political activity? And second, what can we, as individuals of the same society, demand of you, a person contemplating civil resistance, when you are about to make our decision? Only a preliminary discussion can be provided.

- Right, Duty, or Right Action? -

Much of the discussion on political obligation has been couched in the language of rights. Unfortunately, the meaning of a statement that a particular individual has a "right to resist" is ambiguous. It is not at all clear how such usage of the term "right" operates in the moral justification of this type of political activity. Certainly, it has not been considered sufficient to justify action. Consider, for example, Sidney Hook's thesis that a democrat can have a standing right to resist totalitarian regimes; yet because of the possible consequences he may not wish to exercise said right.¹ Or as

another example, consider John Rawls' statement that the conditions establishing the possession of a right to resist may not be sufficient to allow the exercise of that right.² A careful study into the nature of rights is beyond the scope of this essay. However, one point does need examination: if the language of rights is going to be an integral part of a theory of obedience, then the relationship among the possession of a right, the exercise of a right, and moral responsibility must be clarified.

Some people may want to criticize the distinction between the possession of a right and the exercise of that right. They may ask how it is that one can speak of a person or group as having a right to perform disobedience acts and at the same time insist that the means by which this right is exercised must be subject to moral assessment. In other words, what sense does it make to talk of the right apart from the means of its exercise? How can one have a right to disobey if in fact he should not disobey (considering the probable consequences of disobedience)?

In one set of circumstances, this criticism need not detain us, namely, that it is not contradictory to say that an individual has a right but that he should not exercise it. For example, to say that a person should not exercise his right of free speech in a given instance is not to deny either that he does have such a right or that under other circumstances that right may justify his desire to use it. With talk about rights, two questions must not be confused: the question whether a person has a right with the question whether, given that he has a

right, he is justified by the particular circumstances in exercising it.³ This is a very important distinction to keep in mind because it applies to obligations and moral rules as well as to rights: whether a person has an obligation or a right or whether a particular moral rule is relevant should not be confused with whether in a particular instance that right, obligation, or moral rule is sufficient to justify a particular action. Several theorists use the term "prima facie" to characterize this distinction. It will be necessary to make reference to this distinction later.

There is another set of circumstances in which the above criticism--that talk about a right apart from the means of its exercise is incompatible with the attempt to subject these means to moral assessment--does hold, namely, when that right is said to be sufficient to justify its exercise or when there are no extenuating circumstances to overrule its exercise. To appreciate the force of this criticism, one must examine a little more carefully what it means to possess a right.

D. D. Raphael identifies two different types of rights. The first he calls a "right of recipience" and describes as follows:

Here we speak of a right against someone else, i.e., a right to receive something from him, even if the something is simply the facility of being left alone. Such a right is equivalent to the existence of an obligation on the part of the other person against whom one has the right.⁴

The most important feature of this type, then, is the correlation of rights and duties such that the right of one

person is the duty of another. The best example of cor-relativity of rights and duties is those relationships between two parties of a contract: each party promises something in return for something else; and therefore each has both a right against and a duty towards the other. This is the most common conception of rights. As a matter of fact, some theorists seem to feel that this is the only type of right.⁵

The second type of right Raphael calls a "right of action" and defines as follows:

Here we speak of a right to do something. Such a right is equivalent to an absence of obligation. If A has a right to sing in his bath, to cultivate his garden, or to give away his inheritance, this means that he has no obligation to refrain from these actions. In doing such an action, he is doing nothing wrong. He is morally and legally free to do the action, i.e., he is not morally or legally bound to refrain.⁶

A right of action, then does not entail duties by specific people to respect this right. It is rather an idiom to express the rightness of an act and to indicate that because of the absence of obligations an individual is morally free to engage in that action if he so chooses. He may, of course, choose not to act. Under which type of rights, then, have theorists classified the "right to resist"? The answer is both--and this is what leads to the moral confusion over the nature of political obligation.

The right to disobey comes about first when the government violates the limits of obedience or second when an individual withholds his consent to the government of

the day. The right of resistance, then, occurs in the absence of any obligation to obey the law. Clearly, this right is similar to a right of action. The individual is no longer required by his obligations to refrain from doing certain acts. In short, he is free from obligation. This, of course, is the condition of moral freedom, and that is exactly what a right of action implies: Consider, for example, that I may promise not to sing in the bath. My freedom of action has been curbed. But if released from this promise, I am once more free to sing. Obligations, then, are discrete: once released, one's original freedom of action returns. It should be noted at this point that the "right of resistance" is really a misnomer. It should really be the "right to act without the restraint of political obligations" because any resulting disobedience may or may not be meant as resistance.

Because it can involve the correlativity of duties and rights, the right of resistance is also a right of recipience. Consider that the government's right to rule is correlated with the citizen's obligation to obey; and further that the citizen's right to act without restraints (to resist) is dependent upon the government's duty not to interfere in certain areas of human behavior. In other words, the citizen seems to have an agreement whereby he gives up his right to act without restraints in return for certain duties by the government (i.e., its functions). In return for these functions, the citizen is obligated to obey. Under certain circumstances, however, his right of action can be restored.

I stated that when the possession of a right was thought to be sufficient to justify its exercise (because of the absence of extenuating circumstances) talk about a right apart from the means of its exercise can be incompatible with the attempt to subject these means to moral assessment. It should be obvious by now why this is so: If the possession of a right is sufficient to justify its exercise, then the individual is returned to a condition of moral freedom. In situations like singing in the bath or criticizing the government, moral freedom may, of course, be desirable. But we have seen how vicious this concept can be if it is applied to acts of dissent. The usage of the term "right," then, operates very badly in the moral justification of civil resistance. This freedom accounts for the paradox found in Schaar's statements on moral responsibility.⁷ Only a right can allow an individual to act or not act as he so chooses and still allow him to fulfill his moral responsibilities. But in the face of grave social injustices, surely we would want to say more than that the individual may, if he so chooses, try to redress that injustice. We would want to say, at the very minimum, that it is morally desirable that he act; and there are times when we would want to say even more. As Melden suggests, the language of rights can be very misleading when we want to make moral recommendations:

In general, interested persons have the right to go to the theatre...simply because they are mature moral agents capable of deciding for themselves how to conduct the course of their lives; but if it were morally desirable for A to go to the theatre

he would say, less misleadingly, not that he has the right to do so but that he ought to do so.⁸

It probably was this confusion between being free to act and being morally urged to act that prompted Lewy to say:

To obey the law is the mark of civic virtue, but to oppose commands of the state which threaten the very basis of civilized life is a sign of even higher moral excellence. A carefully circumscribed right of resistance may not be the best way of implementing this conception of democratic citizenship if only because of the complexity of deciding whether and by whom this right may be invoked in a concrete situation. It will serve intellectual clarity and will emphasize the personal responsibility for moral judgment to speak of a moral duty to disobey and resist immoral laws instead of invoking a right of rebellion.⁹

If justified resistance cannot be described as a right, can it always be considered as a duty? I recommend that for purposes of "intellectual clarity" the answer be no.

Clearly, occasions can arise in which we would want to say that it was an individual's moral duty to resist the government:

Indeed, the case of the Nazi calls attention to something traditional consent theory seems to have overlooked: the duty to resist. There are times in human history when men are not merely free(d) from an obligation to obey, but positively obligated to oppose the powers that be.¹⁰

I suggest that it will serve the language of moral condemnation if not all justifiable acts of resistance are described as a duty. If it makes any sense at all to distinguish between doing what one ought to do and doing one's duty, then I think that this distinction should be applied to disobedient acts. This distinction between right action and duty is useful because duties can be considered to carry more moral weight and therefore cannot as easily be overridden. To determine why duties carry more moral weight, one must examine the sources of this type of obligation. To do this, it might be useful to consider, first of all, why the language of rights has come to occupy such a central role in the moral justification of civil resistance.

- A Theory of Presumptions -

Many theorists have been held captive by a particular image of man. This image has led them to consider only one model of obligation. We have already encountered part of this image when performance and the social contract doctrine were discussed. At that time, it was suggested that the social contract theorists considered government as "artificial," i.e., it was created solely for the purpose of protecting certain rights inherent in the nature of man. This view of the polity resulted from an atomistic, individualistic conception of man. We encountered another part of this image when it was learned that some theorists felt that man could not assume obligations without his consent. This was the strong sense of what it meant to say that a moral obligation was "self-

imposed." What are the implications of having an atomistic, individualistic conception of man whose consent is both necessary and sufficient for assuming obligations?

The most important effect is that only one model of obligation is considered, namely contractual obligations. This, of course, is the discrete model of perfect obligations. To be sure, political obligations have resulted from contractual arrangements. R. P. Wolff mentions three such types: contractual obligations to an individual (vassal to the liege lord), to a group (the social contract), or to a set of institutions (loyalty oath). But the first and the last do not seem very significant, and we have seen at least some of the inadequacies of the second. The possibility must be entertained that while political philosophers, for the most part, have concentrated on them, contractual political obligations have proven rather insignificant as a moral guide to the civil dissenter. At least one social contract theorist has sensed this inadequacy:

Hence we ordinarily have both a moral duty as well as a moral obligation to support just and efficient institutions, the obligation arising from our voluntary acts while the duty does not.¹¹

What is the essential difference between the obligation and the duty? This question is directly related both to the question of the extent and nature of moral responsibility in relation to political activity and to the problem of determining the moral basis of an obligation to resist tyranny.

The possibility arises that attached to all stages

of civil resistance is some degree of moral responsibility. I would assert that such an approach would constitute a radical break with the traditional conception of the limits of political obedience. The paradox of the traditional approach is that, as we have seen, theoretical assumptions concerning the behavior of civil dissenters have, occasionally, been introduced. Yet because they were not given any moral weight, they were not acknowledged as having radically modified the basic model of obedience. The concept of moral freedom needs to be replaced by that of "unnecessary mischief." Any act of any social consequences needs justification. Neither anarchy nor tyrannical oppression frees a man from the responsibility of his acts:

But when we contemplate real cases, would we not rather want to maintain that even in chaos there is responsibility, that even then the individual has some obligation to think of others as well as himself, the welfare of society or mankind as well as his own?¹²

Albert Camus has dramatized the dilemma of a self-conscious revolutionary:

Alors, une question ce pose: Si l'idée n'arrive pas à tuer les enfants, méritet-elle qu'on tue un grand-duc?¹³

A moral justification has to be given not only for the assassination of a political figure but also for the killing of children or innocent bystanders. And what is sufficient for the former may not be sufficient for the latter. But what is the basis of this type of obligation and this type of responsibility?

Wolff declares that in addition to contractual obligations there are so-called "natural" obligations which arise from some human relationship (such as that of a child to its parents).¹⁴ Surely, the role of citizen also encompasses certain "natural" obligations. The most difficult problem is to determine the source of this type of obligation. To fully discuss this problem would require a comprehensive analysis of moral obligation and its role in the justificatory process. All that can be suggested here is that it would be valuable to conceptualize such obligations in terms of what Hyneman has called a "presumption." He describes the most important feature of a presumption as follows:

A presumption can be overcome by the introduction of relevant considerations that were unknown or overlooked when the presumption was formed. The burden of producing the evidence and reasoning, the duty of making the argument, that overcomes a presumption or limits its application is on the man who opposes the presumption.¹⁵

In human relations, then, it is presumed that there are certain rights and responsibilities that a morally enlightened individual must assume. The individual is not allowed to hold in abeyance the fulfillment of these responsibilities until he has received, to his satisfaction, sufficient reasons as to why he should honor them. If he is a parent, friend, citizen, then certain obligations follow as a matter of course. Just as an individual cannot make a promise or sign a contract without being morally bound to fulfill his obligations, he cannot assume the roles of parent, etc., without also assuming the cor-

responding duties. To abridge one of these presumptions or duties requires, as Hyneman says, compelling evidence and reasoning.

How does a presumption operate in the moral justification of conduct? When a given individual has to make a moral decision, then within the available time he must take account of all presumptions that come to bear upon the problem in addition to contractual obligations that he has assumed and any other relevant teleological and deontological considerations. Let us now apply this formulation to questions of obedience to the law.

Hyneman says that there are at least two presumptions concerning questions of political obedience and civil dissent. There is both a presumption in favor of obedience:

...no one, and therefore no groups, may refuse to comply with any polities, laws, or acts of the government at any time or under any circumstances.¹⁶

and one in favor of disobedience:

Anybody and any number of persons, singly or in groups, spontaneously or in response to leadership, may utter verbal protests against any policies, laws, and acts of government.¹⁷

Hyneman, surely, is correct when he says that if more than one presumption falls within a given area of behavior, one is faced with almost insurmountable difficulties if he tries to define them so that they are mutually exclusive. That is to say, some of the most difficult moral decisions are those in which two or more presumptions con-

flict. Alas, Hyneman does not follow his own advice: Only if there were a presumption recommending illegal behavior would there be conflict in the area of political obedience. Hyneman's protest presumption involves only legal behavior. But are there not any presumptions for illegal action? Is there not a moral duty to resist some forms of tyranny? Hyneman seems reluctant to grant such responsibility in the area of disobedience to the law. Yet in the right context surely there is such a duty or presumption. Benn and Peters provide such a framework:

Outside academic discussions, we do not ask why people keep rules, but why they break them. It is the exceptional and unexpected, not the usual, that requires explanation.¹⁸

Thus, doubts as to one's proper conduct are raised only in the "exceptional and unexpected" circumstances. But this applies to obedience as well as disobedience. That is, there may have to be exceptional circumstances before a duty to disobey arises, but under such conditions the obligation to resist is compelling.

How do these two presumptions relate to the citizen's political obligations? Pitkin does not know whether or not the presumption to resist tyranny should be construed as a part of political obligation or as an alternative to it.¹⁹ I think that in the light of this study this presumption should be construed as a part of political obligation. We have seen how insignificant are contractual obligations and how inconclusive are concerns for social stability. Either the concept of political obligation is, for the most part, irrelevant to the jus-

tification of obedience and disobedience; or it needs to be revised. I suggest that any political presumption should be construed as political obligation. This would mean, of course, that unlike the assumptions of most political philosophers, not all of every man's political obligations lie on the side of obedience.

There is one final consideration that needs to be discussed: is the citizen guided in his acts of obedience and disobedience solely by his political assumptions? I stated earlier that I thought that it would serve the language of moral condemnation if all moral recommendations were not construed as political obligations. I make this recommendation because I would be forced either to invent more presumptions or to concede that disobedience was justified only in tyrannical political systems. The first prospect I find unnecessary and the second morally unjustifiable for what should be obvious reasons. My unwillingness to invent more presumptions does not mean either that there might not be any more or that others should not be devised. All that I am saying is that I see no reason to try to force the invention of presumptions where they are not required. To do so would rob the language of moral conduct of a very valuable distinction. Consider the following two examples: Two individuals object to the war in Viet Nam. One protests by trespassing on military bases to pass out leaflets to the soldiers. The other resists by refusing induction into the service. In the first example I would want to say that, unlike cases of tyranny, the individual is not compelled to take this type of action. Yet the disobedient act still

may be morally justified. Rather than trying to find a presumption to cover such circumstances, I would rather call such an act morally desirable, justifiable, right, and so on. The second example is more complicated. On the one hand, it may be that there is already a presumption which can be applied to draft resistance (for example, one should not commit grossly unjust acts). On the other hand, there may not be such a presumption but it may be that there should be one. That is, it is recommended that a presumption be devised to cover such situations and thereby make certain actions compelling. This is how I conceptualize the role of the Bay-Camus rebel. He is recommending that certain presumptions be adopted, that certain acts become compelling for an enlightened citizenry. Moral debate, then, includes discussion on whether an action is justified, whether a presumption applies to that action, or whether in the absence of such a presumption there ought to be one. In short, the distinction between right action (considerations which justify an act) and a presumption (considerations that make an act compelling) suggests that a citizen is not guided solely by his political obligations. Without such a distinction, the term "political obligation" is too broad to play any meaningful role in the moral justification of political conduct.

- The Contingent Model of Imperfect Obligation -

Most political philosophers have taken the following question to be central to considerations of political obligation: "Why should I obey any law, support any government, or acknowledge the authority of any state?"

There are two ways of answering this question. One is to uncover the general sources of the obligation to obey the law, i.e., to find the necessary and sufficient conditions for obedience. The other is to determine specific guidelines for political dissent, i.e., to discover the sorts of considerations that are relevant to a decision of obedience or disobedience to a particular law. Most theorists have assumed that the necessary and sufficient conditions for obedience can be specified. This was their major failing. One cannot circumscribe à priori the conditions under which rights and political obligations become effective. In their attempt to do just this, many theorists took contractual obligations as their model.

We have seen the complete inadequacy of the discrete model of political obligations to provide a means for assessing all phases of a political actor's conduct. Serious doubts were raised concerning the three main features of that model: (1) A political obligation is something a citizen either has or has not. (2) When the citizen has such an obligation, he is absolutely bound to obey the law. (3) All phases of a political actor's conduct can be morally assessed by examining his political obligations.

Moral responsibility precludes both the discrete conception of political obligations and the possibility that such obligations are perfect: if a citizen can always be held accountable for his actions, then his obligations can never be set aside; for as we have seen this implies a condition of moral freedom. Further, because of conflicting obligations, it is not

contradictory to say at one and the same time that a citizen has an obligation to obey the law but that he should not obey.

Moral responsibilities are not coincident with political obligations; they are more inclusive: Political responsibilities do entail duties or presumptions. However, to characterize the nature of this type of obligation, a new model of obedience is required. I would contrast the discrete model of perfect obligations with the "contingent model of imperfect obligations," contingent because the citizen is morally responsible for all his acts, obedience and disobedience; imperfect because such obligations are prima facie, not absolute. Moral responsibilities do not end here. There are many factors which have a bearing on a particular decision to disobey: the social-political considerations (i.e., the interests of society, the nature of the political system, the performance of the government of the day, the morality of a particular law or policy); the activity-types (demonstration, riot, civil disobedience, revolution--violence, acceptance of the penalty); the stake in the community (has one consented? does he approve? is he aware?); and the aspects of a particular act (the motive, the norms of behavior, the consequences). Some of these factors give rise to obligations; others form reasons that a rational man would find compelling. All together they constitute the moral justification for any given act of obedience or disobedience. We, as members of the same community, can demand of you, a person contemplating civil resistance, that you formulate your justi-

fication in terms of these factors.

Further study into the relationships of these particular presumptions, responsibilities, duties, obligations, and rights is essential to an adequate theory of civil resistance. But first a proper framework for analysis must be established. This essay has been an attempt at such a clarification.

FOOTNOTES

CHAPTER ONE

- 1 For a refutation of the argument that legality implies morality see Richard A. Wasserstrom, "The Obligation to Obey the Law," U.C.L.A. Law Review, X (May, 1963), pp. 786-790. For a possible proponent of this view see T. D. Weldon, The Vocabulary of Politics (London: Penguin Books, 1953), especially Chapter 3.
- 2 Harry W. Jones, "Civil Disobedience," Proceedings of the American Philosophical Society, III (August, 1967), p. 197.
- 3 Stuart M. Brown, Jr., "Civil Disobedience," Journal of Philosophy, LVIII (October 26, 1961), p. 679.
- 4 I have included legal protest here in order to provide some sort of continuity with such activities as demonstrations and teach-ins. I have excluded it from the "official" definition for two reasons: first because I wanted to avoid the problem of trying to distinguish between this form of legal activity and other types such as petitions and the formation of a dissenting political party and second because illegal activity raises special problems for moral justification and it is these with which I am concerned.
- 5 Public riot as protest will be discussed shortly.
- 6 Martin Luther King, Jr., "Letter from Birmingham City Jail," The New Leader (April 22, 1968), p.4.
- 7 Bertrand Russell, "Civil Disobedience," New Statesman LXI (February 17, 1961), p. 245.
- 8 Harrop A. Freeman, article in Civil Disobedience, published by the Center for the Study of Democratic Institutions, 1965, p.3.

- 9 "A Rebellion is Not a Riot," The Minority of One, IX, No. 9 (September, 1967), p. 3.
- 10 Andrew Kopkind, "The Revolt Against America," New Statesman, LXXIII (July 28, 1967), p. 603.
- 11 "A Rebellion is Not a Riot," op. cit., pp. 4-5.
- 12 Alan Lovell, "Direct Action?" New Left Review (March/April, 1961), p. 25.
- 13 Christian Bay, "Civil Disobedience," Draft article for the International Encyclopedia of the Social Sciences, (Stanford, 1966), p. 2.
- 14 I do not wish to preclude here the empirical possibility that revolution could not, as a matter of fact, be achieved within the existing social and political structure. It just may not be possible without violence. I am only saying that it is not analytically impossible to speak of a legal revolution.
- 15 Bay, op. cit., p. 6
- 16 Ibid.
- 17 Raghavan N. Iyer, in Civil Disobedience, op. cit., p. 21.
- 18 P. H. Nowell-Smith, Ethics (London: Penguin Books Ltd., 1964), p. 210.
- 19 Ibid., p. 201.
- 20 Hanna Pitkin, "Obligation and Consent, Part II," American Political Science Review, LX (March, 1966), p. 50.
- 21 Douglas N. Morgan, "On Justifying Political Action," Ethics, LXXI (October, 1960), p. 13.
- 22 T. C. Pocklington, unpublished manuscript, 1968, Chapter III, footnote 9.

CHAPTER TWO

- 1 Hanna Pitkin, "Obligation and Consent, Part I," American Political Science Review, LIX (December, 1965). p. 990
- 2 Alan Gewirth, Political Philosophy (New York: Macmillan Company, 1965), p. 5.
- 3 Ibid.
- 4 Harald Ofstad, "The Ethics of Resistance to Tyranny," Inquiry, IV (1961), pp. 152-4.
- 5 S. I. Benn and R. S. Peters, The Principles of Political Thought (New York: The Free Press, 1966), pp. 76-77.
- 6 Ibid., p. 380.
- 7 John Rawls, "Justification of Civil Disobedience," mimeograph article (copyright, 1966, The American Political Science Association), p. 2.
- 8 Harry V. Jaffa, "Natural Rights," International Encyclopedia of the Social Sciences, XI, p. 87.
- 9 The distinction would not, of course, be important if in the first situation government was not created solely to protect certain rights.
- 10 Franz L. Neumann, "On the Limits of Justifiable Disobedience," in Conflict of Loyalties, edited by R. M. MacIver (New York: Harper and Brothers, 1952), p. 56.
- 11 Newmann probably would not agree with this assumption (See Ibid.). But if it is not made, then, as we shall see later there can be no obligation to obey.
- 12 Gewirth, op. cit., p. 29.
- 13 D. D. Raphael, "The Rights of Man and the Rights of the Citizen," in Political Theory and the Rights of Man, edited by D. D. Raphael (Toronto: Macmillan and Co. Ltd., 1967), p. 111.

- 14 Benn and Peters, op. cit., p. 118.
- 15 It may be objected that this dichotomy over-simplifies the functions of government because natural rights also stipulate limits to governmental inaction, namely to prevent unjustifiable coercion from the private sector. However, I do not think that this objection forces a fundamental modification of the above formulation.
- 16 Nathan Glazer, "Civil Disobedience on Campus: Its Methods, Meaning, and Morality," College and University Business, XL, No. 2 (February, 1966), p. 48.
- 17 Rawls, op. cit., p. 10.
- 18 Ibid.
- 19 Ibid., p.8
- 20 Henry David Thoreau, On the Duty of Civil Disobedience, in Walden and On the Duty of Civil Disobedience (New York: Holt, Rinehart and Winston, 1948), p. 282.
- 21 Martin Luther King Jr., "Letter from Birmingham City Jail," The New Leader (April 22, 1968), p. 6.

CHAPTER THREE

- 1 C. W. Cassinelli, "The 'Consent' of the Governed," Western Political Quarterly, XII (June, 1959), p. 406-7. (*Italics added.*)
- 2 John H. Schaar, Loyalty in America (Berkeley: University of California Press, 1957), p. 19. (*Italics added.*)
- 3 This new interpretation may not entirely avoid all of the traditional criticisms: what of those who are apolitical? those who reject everything? have they no obligations? I shall not answer these criticisms largely because I find them damaging but also because I am more concerned with the models of obligation that underlie theories of obligation and this new interpretation of consent is very illuminating.

- 4 Schaar, op. cit.; Sidney Hook, The Paradoxes of Freedom (Berkeley: University of California Press, 1962); and David Spitz, "Democracy and the Problem of Civil Disobedience," American Political Science Review, XLVIII(June, 1954), pp. 386-403.
- 5 Hook, Ibid., p. 109. (Italics are the author's.)
- 6 Spitz, op. cit., p. 393-4.
- 7 Ibid., p. 394.
- 8 Ibid., p. 395.
- 9 Schaar, op. cit., p. 24.
- 10 Ibid., p. 48. (Because the democrat has the same right in a totalitarian regime the quotation is applicable.)
- 11 Pitkin, op. cit., p. 999.
- 12 Spitz, op. cit., p. 398.
- 13 Schaar, op. cit., p. 42.
- 14 Hook, op. cit., p. 127. (Italics are the author's.)
- 15 Schaar, op. cit., p. 17
- 16 See above, Chapter III, pp. 39-40.
- 17 Hook, op. cit., p. 109. (Italics are the author's.)
- 18 Ibid., p. 110.
- 19 This is not to say that non-moral considerations cannot override moral ones. The intent is only to question the strange conception of morality being employed here, namely the possibility that the repressive governmental measures leading to persecution and death may not be morally relevant.
- 20 Harry V. Jaffa, "Natural Rights," International Encyclopedia of the Social Sciences, op. cit., p. 88.

- 21 Hook, op. cit., p. 126.
- 22 Schaar, op. cit., p. 48-9.
- 23 Ibid.
- 24 Jones, op. cit., p. 197.
- 25 John Rawls, "Legal Obligation and the Duty of Fair Play," in Sidney Hook, ed., Law and Philosophy (New York University Press, 1964), p. 10.
- 26 Hook, op. cit., p. 118.
- 27 Spitz, op. cit., p. 387.
- 28 Schaar, op. cit., p. 43.
- 29 Ibid., p. 36.
- 30 Ibid., p. 48.
- 31 Michael Walzer, "The Obligation to Disobey," Ethics, LXXVII (April, 1967), p. 165.
- 32 Alan Lovell, "Direct Action?" New Left Review (March/April, 1961), p. 16.
- 33 Christian Bay "Civil Disobedience," Draft article for the International Encyclopedia of the Social Sciences (Stanford, 1966), p. 37.
- 34 T. R. Templin, Democracy and Nonviolence (Boston: Porter Sargent Publisher, 1965), p. 167.
- 35 Martin Luther King Jr., "Love, Law and Civil Disobedience," New South, XVI (December, 1961), p. 7
- 36 Ibid., p. 5.

CHAPTER FOUR

- 1 Charles Hyneman, Popular Government in America (New York: Atheton Press, 1968), p. 264.

- 2 Richard Wasserstrom, "The Obligation to Obey the Law," U.C.L.A. Law Review, X (May, 1963), p. 781.
- 3 Hook, op. cit., p. 110.
- 4 Plato, Crito. p. 11.
- 5 David Hume, Of the Original Contract (New York: Oxford University Press, 1962), p. 160.
- 6 John Dickinson, "A Working Theory of Sovereignty-II," Political Science Quarterly, XLIII (March, 1928), p. 51.
- 7 Cox v. Louisiana, 379 U.S. 559, 584 (1965) (Black, J. dissenting), quoted from Burke Marshall, "The Pro-test Movement and the Law," Virginia Law Review, LI (June, 1965), p. 801.
- 8 Sidney Hook, "Neither Blind Obedience nor Uncivil Disobedience," The New York Times Magazine (June 5, 1966), p. 122.
- 9 Hook, The Paradoxes of Freedom, op. cit., p. 112. Nathan Glazer, op. cit., p. 48, poses the same dichotomy: "The most significant and difficult problems of civil disobedience arise only in the context of democracy. Even in non-democratic settings a degree of public order exists and one can raise the question--as it was raised in Spain, India, and the South--whether the threat to order is not a greater evil than the achievement of a greater measure of liberty, of democracy, even for those people who gain that freedom."
- 10 For a full discussion of these conditions, see: Stuart Brown, "Civil Disobedience," Journal of Philosophy, LVIII (October, 1961); Hook, The Paradoxes of Freedom, op. cit.; Hook, "Neither Blind Obedience nor Uncivil Disobedience," New York Times Magazine (June 5, 1966); Guenter Lewy, "Resistance to Tyranny: Treason, Right or Duty?" Western Political Quarterly, XIII (February, 1960); R. M. MacIver, ed., Conflict of Loyalties (New York: Harper and Brothers, 1952); and Wolfgang Schwartz, "The Right of Resistance," Ethics, LXXIV (January, 1964).

- 11 Hook, "Neither Blind Obedience nor Uncivil Disobedience," op. cit., p. 126.
- 12 Glazer, op. cit., pp. 51-2.
- 13 Lewy, op. cit., p. 584.
- 14 Rawls, "Justification of Civil Disobedience," op. cit., abstract to the article, p. 1.
- 15 Darnell Rucker, "The Moral Grounds of Civil Disobedience," Ethics, LXXVII (January, 1966), p.425.
- 16 Hook, The Paradoxes of Freedom, op. cit., p. 112.
- 17 Hook, "Neither Blind Obedience nor Uncivil Disobedience," op. cit., p. 124.
- 18 Brown, op. cit., p. 680.
- 19 Ibid., p. 679.
- 20 Hyneman, op. cit., p. 250.
- 21 Ibid., p. 272.
- 22 This is not to say that anyone who commits civil disobedience must be upholding the present political system. But if overthrow of the government is the intent, then obviously stability is not an issue.
- 23 I do not mean that violence caused the collapse of the Weimar Republic; only that, given a condition of instability, the justification of violence is going to be more stringent.
- 23A Glazer, op. cit., p. 52.
- 24 Gabriel Almond and G. Bingham Powell, Jr., Comparative Politics (Boston: Little, Brown and Company, 1966), pp. 81-82.
- 25 Hyneman, op. cit., p. 258.

- 26 Hook, The Paradoxes of Freedom, op. cit., p. 115.
- 27 Hyneman, op. cit., p. 275.
- 28 Cassinelli, op. cit., p. 405.
- 29 Max A. Shepard, "Law and Obedience," The American Political Science Review, XXX (October, 1939), p. 783.
- 30 None of these remarks are intended to refer to criminal activity.
- 31 Shepard, op. cit., p. 789.
- 32 Ibid., p. 794.
- 33 Ibid., p. 794.
- 34 Ibid., p. 792.
- 35 Ibid., pp. 809-10.

CHAPTER FIVE

- 1 See above, Chapter III, p. 46.
- 2 See above, Chapter II, p. 30.
- 3 A. I. Melden, Rights and Right Conduct (Oxford: Basil Blackwell, 1959), p. 19.
- 4 D. D. Raphael, "Human Rights, Old and New," in Political Theory and the Rights of Man, edited by D. D. Raphael (London: Macmillan, 1967), p. 56.
- 5 See Benn and Peters, op. cit., p. 101; A. C. Ewing, The Individual, The State, and World Government (New York: The Macmillan Company, 1947), p. 14; and J. P. Plamenatz, Consent, Freedom, and Political Obligation (London: Oxford University Press, 1938), p. 83.
- 6 Raphael, op. cit., p. 56.

- 7 See above, Chapter III, pp. 52-53.
- 8 Melden, op. cit., p. 2.
- 9 Lewy, op. cit., p. 594.
- 10 Pitkin, op. cit., p. 41
- 11 Rawls, op. cit., p. 1.
- 12 Pitkin, op. cit., p. 132.
- 13 Germaine Brée, ed., Albert Camus (New York: Dell Publishing Co. Inc., 1963), p. 132.
- 14 R. P. Wolff, ed., Political Man and Social Man (New York: Random House, 1966), p. 224.
- 15 Hyneman, op. cit., p. 262.
- 16 Ibid., p. 262.
- 17 Ibid.
- 18 Benn and Peters, op. cit., p. 69.
- 19 Pitkin, op. cit., p. 42.

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